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Supreme Court, U.S.

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IN THE SUPREME COURT OF THE
UNITED STATES
October term 2000

EUGENE JONESON-PETITIONER
VS.
THE PEOPLE OF THE STATE OF
ILLINOIS

IN THE INTEREST OF
LUELLA JONESON

On Petition For Writ of Certiorari to the United States Court For the 1st District of Illinois

PETITION FOR WRIT OF CERTIORARI OF EUGENE HERMAN JONESON

Eugene Joneson
Pro Se
11732 S. Prairie
Chicago, Illinois 60628
773-568 -4132

Date August 12, 2001

38 pp

Questions Presented For Review

I. Was it a violation of Due Process when denial of trial court motions for a continuance, discovery, and post trial evidence by the trial court judge for the best interest hearing, caused evidence to improperly omitted that was in petitioner's favor.

II. Was it an abuse of discretion by the trial court judge when she: 1. allowed the return of visitation to be determined by the wishes of the foster parents instead of the interpretation of state statue for the best interest hearing and with additional consideration given to open adoption for the birth parent Eugene J.

III. Was it an Equal Protection violation for putative parents and family and a violation of the 14th amendment when no recorded interview of L.J's wishes about adoption were made as dictated by Illinois law.

IV. Was it a 1st amendment violations and establishment clause when adoption was completed across religious faith without compelling evidence and the consent of the birth parent.

V. Was it a violation of Due Process and Equal Protection when: Child custody evidence created by the was used as the manifest weight and the clear and convincing evidence for the determination of unfitness of the father E. J. and termination of parental rights in the best interests of L. J. Especially when one of the criteria for evaluation was that the parents must be suspected of mental illness.

VI. Should the United States Supreme Court review the final judgement for unfitness of the father Eugene J Would this review show the preponderance of the evidence shows that E. J. was

thwarted by the efforts of the Caseworkers by using evaluator and caseworker reports as the clear and convincing and the manifest weight of the evidence instead of determining reasonable progress from the benchmark of progress made from the conditions in existence from when custody was taken from the parents

VII. Was it a violation of the 14th amendment due process clause when the termination of parental rights solely for the reason of failure to make reasonable progress in parenting skills was ordered without compelling evidence about change of religion, adoption without parents consent and without consideration of open adoption

parties to the proceeding and rule 29.1 statement

Eugene H. Joneson
11732 S. Prairie
CHICAGO, ILLINOIS 60628

James E. Ryan
State of Illinois Center
100 West Randolph St.
12th fl. Chicago, Il 60601

Richard A. Devine
the State's attorney of Cook County
Room 309 Richard J. Daley Center
Chicago, Illinois 60602
Attn. Kenneth T. McCurry

The Public Guardian of Cook County
2245 W. Ogden Avenue. 5th floor
Chicago, Illinois 60612
Attn. Jane Burwell

The Illinois Department of Children and Family Services
100 W. Randolph, 6th floor
Chicago, Illinois 60601
Attn: Cheryl Cesario

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Reasons for Granting The Writ.....

I. It was a violation of Due Process by denial of trial court motions for a continuance and discovery. by the trial court judge for the best interest hearing,

II. It was an abuse of discretion by the trial court judge when she: 1. allowed the return of visitation to be determined by the wishes if the foster parents instead of the interpretation of state law and 2.when no consideration was given to open adoption for the birth parent Eugene J.

III. It was an Equal Protection violation for putative parents and family and a violation of the 14th amendment when no recorded interview of Luella J's wishes about adoption was made

IV. It was a 1st amendment violation when adoption was completed across religious faith without compelling evidence and consent of the birth parents.

V It was a violation of Due Process and Equal Protection when: Investigator reports and social workers reports based on mental Illness, were as the manifest weight and the clear and convincing evidence for the determination of unfitness of the father E. J. and termination of parental rights in the best interests of L. J.

VI.The United States Supreme Court should review the final judgement for unfitness of the father E.J. Would this review show the preponderance of the evidence shows that E. J. was thwarted by the efforts of the caseworkers by using evaluator and caseworker reports as the clear and convincing and the manifest weight of the evidence instead of determining reasonable progress from the benchmark of progress made

from the conditions in existence from when custody was taken f rom the parents

VII. It was a Violation of the 14th amendment with the termination of parental rights solely for the reason of failure to make reasonable progress in parenting skills without compelling evidence about religion, race, consent of parents and without consideration of open adoption

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Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court ,The Appellate Court of Illinois 1st Judicial District, to review the merits appears in "Appendix A-1" and is unpublished. The Order denying the petition for rehearing Appellate 1st Judicial District is located in "Appendix A-2" and is unpublished. The Order of the State trial Court completing adoption is in "Appendix B-1" and is unpublished. The Ruling of the trial court Judge in the unfitness hearing is located in "Appendix B-2" and unpublished.. The Ruling of the trial court judge for the best interest hearing is located in "Appendix B-3" and unpublished.. The Order denying the petition for leave to appeal in the Supreme Court of Illinois is located in "Appendix C-1" and unpublished. The Order denying motion for reconsideration of the order denying petition for leave to appeal is located in "Appendix D" and unpublished. The order denying the reinstatement of visitation in toto by the Appellate 1st district court is in "Appendix E"

JURISDICTION

On December 2nd, 1997 judgement was passed from the Circuit Court of Cook County finding the father, Eugene J. unfit to parent. On April 7th, 1998 the father and mother's parental rights to Luella J. were terminated The order for completion of adoption appears in Appendix C. Post trial motions to reconsider unfitness and termination of parental rights and to reinstate visitation were denied on August 6th, 1998.

The Notice of Appeal was filed on September 3rd 1998. On August 24, 1999 the appellant brief was allowed to be filed instanter. A copy of that decision appears at Appendix A After

one extension of time, the Petition to rehear was filed on 8/15/2000. It was denied on September 7th, 2000. A copy of this order is found in Appendix B.

On September 25th, 2000 an affidavit of intent to file was mailed to the clerk's office of the appellate court 1st District. On October 12th, 2000 a motion for the extension of filing time was filed with the Illinois Supreme Court Clerk. The 1st extension of time was allowed til November 14th, 2000. The petition for leave to appeal was filed timely on that date. The petition for leave to appeal was denied on January 29th, 2001. A copy of this order is found in Appendix D.A motion for extension of time to file motion for leave to file motion for reconsideration of the order for denying petition to leave to appeal was filed on February 9th, 2001. The extension of time was granted and the due date to file motion for leave to file motion for reconsideration of the order denying petition for leave to appeal was ordered for March 1st, 2001 and was timely filed on March 1st, 2001. On March 15th. 2001, an order was entered by the Supreme Court of Illinois denying the motion for leave to file a motion for reconsideration of the order denying petition for leave to appeal. A copy of the order appears in Appendix E.

The date on which the highest state court decided on my case was March 15th, 2001.An extension of time within to file a petition for a writ of certiorari was granted to and including August 12th, 2001 on May 23rd in application No.00A1012
The jurisdiction of this Court is invoked under 28 U,S.C. at 1257(a)

CONSTITUTIONAL PROVISIONS, TREATIES, STATUES, ORDINANCES AND REGULATIONS INVOLVED IN THIS CASE

The first Amendment ..Freedom of Religion. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the

press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. 15

The fourteenth amendment Article 14, Section 1 Due Process and Equal Protection All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law: nor deny to any person within its jurisdiction the equal protection of the laws 7,14,16.23,25

42 USCS annotation 5103 at (B)(1)& (2) (D)

(b) (1) The secretary, through the Center, is authorized to make grants to the States for the purpose of assisting the States in developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs.

(2)(D) In order for a State to qualify for assistance under this subsection such State shall--demonstrate that there are in effect throughout the State, in connection with the enforcement of child abuse and neglect laws and with the reporting of suspected instances of child abuse and neglect, such administrative procedures, such personnel trained in child abuse and neglect prevention and treatment, such training procedures, such institutional and other facilities (public and private), and such related multi disciplinary programs and services as may be necessary or appropriate to assure that the State will deal effectively with child abuse and neglect cases.....17,22

Statement of the Case

L. J. was born on January 3oth, 1994 at home to mother F. O. and father E. J. When E. J. told and wrote Willa Henning (Appendix L pg 22) , a department and Children and Family services caseworker about her birth and asked for DCFS help, especially since F. O. might be suffering from Post Partum depression L.J. was taken from F. O. while E. J. was at work, by a department of special investigations employee for DCFS for risk of harm (Vol 1 of 6, R 106).(Appendix L pg 10). Reasons given were because F. O. had no proof she was on medication prescribed, had no doctor records of the birth and she had threatened the case worker. When L. J.'s case came into care on February 22nd. 1994.the temporary custody order specifically stated that the parents of this minor are mentally ill and unable to care for this minor. (Sr 1 pf 2. C 74 & Vol 1 of 2. C 10-11) (Appendix L pg 11) E. J. was not named as the person responsible for the child abuse or neglect (Sr 1 of 22, C 141).

Arguments by the state to make L. J. a ward of the state were that: 1. E. J. was under court order not to be living with F.O. But this order was never produced as evidence and also has never been found. 2. F. O. had also abandoned two older sibling sisters of L. J., 3. and the two older sibling sisters were currently being appealed for the termination of parental rights because E. J. had been in services for many years for parental skills but was unable to convince anyone that he was able to adequately parent his children for their return home (Vol 7 of 9, TE 129). 4. Psychologicals and psychiatrics made by the state also indicated E. J. was unable to parent due to a mental impairment.

At the unfitness trial of E. J., his attorney submitted the most recent psychiatric by a Doctor Childers indicating no auditory hallucinations (Vol 8 of 9, trial exhibits, 114, 137), An evaluation from Christopher Randolph from Northwestern University indicating there were no neuropsychological abnormalities (Vol 6 of 9, Te

205), a report from Doctor J. Anderson from the University; of Illinois recommending that no further neurological studies be made at this time (Vol 6 of 9, Te 203), testimony from notes of over 60 hours of therapy by therapist Tod Harrison, that did not see E.J. as having a severe personality disorder (Sr 1 of 2, C 91)(Appendix L, pg 14), and a psychological update from Doctor Marty Blackman that concluded E. J. did not meet the criteria for a personality disorder,(Vol 2 of 6, R 180)(Appendix L, pg 15-16). LCSW Tod Harrison of Chicago Community Counseling Center, testified Catholic Charities was not cooperating with E. J in providing therapy and services for father E. J. with his daughter L. J. Since 1995 to trial date they never called and discussed specific issues (Vol 5 of 6,, R127 ln 10-14) even though he wrote and asked for their response. (Vol 8 of 9, Te 137, TE 115, TE 131 & 133, TE 128)

A special investigation team was mandated by the governor using mental illness as its basic criteria for selection of parents who could not make reasonable progress for the return of their children (Vol 1 of 2, 9/25/98 C 78). More importantly because the State Department of Children and Family Services was bloated with cases they could not make clear and convincing decisions about, the P.A.T. was used to provide this information. (Vol 1 of 9, TE 66, Vol 2 of 9 , Gal ex3 TE 184 or TE155) (Vol 1 of 8, TE 66)(Vol 2 of 9 , Gal EX # 3. 184 or TE 185) These reports were used as evidence to in the unfitness and best interest hearings..

State arguments in court for unfitness and termination of parental rights were that E. J. had been in court for over 9 years and had been in Catholic Charities Agency supervision and services at that time, especially parenting class, and had made no reasonable progress in the return of L. J.. Also that not one caseworker of Catholic Charities would recommend the return of L.J. E. J. was found to be unfit due to failure to make reasonable progress..

At the Best Interest Hearing, a continuance was asked for

because E. J's attorney's motion to be dismissed was granted. The continuance was denied even though all witnesses could not attend and all evidence was not available for the hearing. E. J. represented himself pro se.(SR 1 of 2, Appellate stamp 3/5/99 C 027-29)(SR 1 of 2, App stamp 3/5/99 C30) (SR 1 of 2, C27-31)

On the best hearing trial date, E. J.'s parental rights were terminated in respect to L. J. The reason also being for failure to make reasonable progress for L.J.'s return as in the unfitness hearing.. The manifest weight of the evidence as in the unfitness hearing consisted of the special investigation team reports and psychologicals and psychiatrics over six years old.

Compelling evidence needed because of differences in religion and ethnic heritage of the birth father and the non-consent by the birth parent was presented. Adoption and the compelling evidence for it was determined by bonding with foster parents and length of time case was in care. No recorded interview was made with regards to L. J.'s wishes for custody. Open adoption was not considered an option because the judge was unaware of any law that would justify such a judgement.

Motions to vacate or retrial for unfitness or dismissal of best interest hearing were also presented that day. New substantial evidence, validated by David Devalle of the Cook County Commissioners Office was that parenting classes that were testified to as having been offered for the last six years had not been and never were (SR 1 of 2, C 227)'(appendix L pg 23-24) Catholic Charities never had appropriate service plan for E.J. (Vol 1 of 6, R 31).It was brought out in the motion that 1. Only one parenting class was offered for E.J. for the entire period of time from 1985 to 1995 (Vol 3 of 9, Te 176)" appendix G page 128" Hector Rivera , the caseworker at that time had testified that they had.(Appendix L pg 25-27) been offered for all the time he was on the case.

Other substantial evidence was that case reviews were canceled for 3 years in a row 'Appendix G pg 77" (appendix L pg 29 or Vol

1 of 2 Clerk Stamp 1/8/99 C199)and in addition more evidence included a family therapist testimony that E. J.'s alleged personality disorder simply does not exist and a misdiagnosis had been made. (Sr 1 of 2, Jan. 8th, C 94)or (Appendix L page 17-18). Mr. Lietzau had also observed E.J. interacting with children at Loyola Medical Hospital in the pediatrics department where E.J. is a volunteer but not allowed by Catholic Charities to attend visits with E. J. and L. J.(Vol 2 of 2, 9/265/96, C 291) besides having 9 therapy sessions with E. J. (SR 2 of 2, January 8th 1996, C 279- Treatment at Family Interventions). This therapist evidence was not admitted due to late filing of the post trial motion Return of visitation or a stay of judgement was also denied due to loss of jurisdiction by the trial court judge or late filing of post trial motions. This occurred even before all proceedings had been closed by the court with the completion of adoption or the filing of the notice of appeal.. All motions to vacate or retrial for unfitness and to dismiss the best interest hearing were denied even with these considerations of new substantial evidence for failure to make reasonable progress

Argument

Reasons for Granting The Petition for Writ of Certiorari

I. Violation of Due Process of the 14th amendment by denial of trial court motions for a continuance and discovery. by the trial court judge for the best interest hearing,

On the day that the best Interest hearing was held E.J., the petitioner filed a motion to dismiss his attorney and so did his attorney Wilson because of disagreements occurring in the unfitness portion of the trial with the submitting of evidence. But both had asked for a continuance for the best interest hearing.(Vol 1 of 1, 11/17/98 R 58 ln 21-59 ln 4)As attorney Wilson had done nothing for him except to file a motion to withdraw as the appellant's attorney (Appendix L pgs 1-2). E. J. had no witnesses and was unprepared for trial because he thought this was the pretrial date

(Vol 1 of 1, 11/17/98 R 65) and he had filed motions for discovery for witnesses (Vol 1 of 2, 1/8/99, C 27- C 31)(Vol 1 of 1, 11/17/98, R 65) (Appendix L, pgs 3-6)

Judge Mulhern denied the continuance regardless. . (Vol 1 of 1, R 65 ln 5-21) The appellate court has overlooked the fact in their affirmation of the trial court judgement denial of the continuance, that although E.J. was willing to represent himself pro se, E.J. was not wanting to have the best interest hearing on the same day as his appointment. The appellate court also overlooked the fact that a continuance was even filed. This found in " Appendix A-1 pg.19, 3rd para.-pg. 20 para. 1". Further on in the transcript dictated by the appellate court but overlooked, E.J. later argued with the trial court Judge Mulhern for the continuance or dismissal of the best interest hearing so witnesses could be called.(Vol 1 of 1 , 11/17/98 R64, ln23-R65, ln24) Judge Mulhern "With regard to the motion to dismiss the best interest hearing, you indicate that a notice of appeal will be filed. **** There is also a statement that the discovery includes recalling witnesses not thoroughly evaluated.****You can call them and ask them to be here. This motion to Dismiss the Best Interest Hearing is found in(Vol 1 of 2, January 8th, 1999 at C27-C 31) This was argued to the appellate court in "Appendix G pg 138-140", "Appendix I 203 -204",and the Supreme court of Illinois in "appendix K pgs. 252-253"

The best interest hearing was held even though E.J. did not have all of his witnesses or evidence available., This included E.J.' pastor Greg Dell and CC files of case notes and visitation reports favorable to E.J These Catholic Charities records for L. J's case were not available because they had to be duplicated from Alice Wilson files (Vol 1 of 1, R 69 ln 2-11), (Vol 1 of 1, November 17th, 1998, R 69 ln 2- ln 11) .. During the best interest trial it was brought up about Pastor Dell's letter that he could not attend (SR 1 of 2, App stamp 3/5/99 C 30) in the motion to dismiss the best interest hearing. (Vol 1 of 1, R 46 ln 20-23) She continued the trial with

evidence of what the appellant thought would be testified to and did not grant a continuance for his testimony (Vol 1 of 1 R 44 ln 16-R 45 ln 1-11). The trial court essentially decided wether the witnesses were important or not(Vol 1 of 1, November 17th, 1998 R 44 ,ln 16- R 47 ln 2 and R 64 ln 23- R 65 ln 24). Other witnesses motioned for who were not included; 1. caseworker. Julie Yalowitz, who had been on L.J.'s case since January of 1995 (SR 1 of 2, Appellate stamp 3/5/99 C 27-31), 2.The Catholic Charities caseworkers who supervised this case for almost all of the first year, Nora Rodriguez (Vol 1 of 9, R 91 Case Planning Acknowledgment 11/7/94), 3. Laura Scott (Vol 1 of 9, R 43-46 Transfer Summary 4.. Amy Anson, child psychologist, (stated contact with father for Luella should be continued even if Luella was adopted (vol 4 of 9, TE 187)), and therefore could not testify in court. 5. E.J's family therapist. John Lietzau was also not allowed to testify even though motioned for in post trial.(Vol 1 of 1, November 17th, 1998, R 116 ln 5 -11) .

In Supreme Court Rule 318 at © dates set for the disclosure of opinion witnesses and the completion of discovery shall be chosen to ensure that discovery will be completed not later than 60 days before the date on which the trial court reasonably anticipates the trial will commence. In Hearson v. Graudine 87 Ill 115, it reads that a court should not refuse a continuance where the ends of justice clearly require it and an abuse of discretion in doing so will justify a reversal. In Santosky V. Kramer 102 S. Ct. 1388 m (1982) 1397 [8] The extent to which procedural due process must be afforded the recipient is in influenced by the extent to which he may be condemned to suffer grievous loss E.J. though he was willing to represent himself pro se at the best interest hearing was in no way accepting the conclusion of the trial court to deny a continuance as it was in the best interests for Luella to have her birth father as best prepared for the best interest hearing as possible Santosky v. Kramer 102 S. Ct. 1401 at C Two state interests are at stake in

parental rights termination proceedings- a parents Patrai interest in preserving and promoting the welfare of the child and a fiscal and administrative interest in reducing the cost and burden of such proceedings. In Stanley v. Illinois (92 S. Ct 1215) The constitution recognizes higher values than speed and efficiency. Indeed , one might fairly say of the Bill of rights in general, and the Due Process in Particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones.

Judge Mulhern also abused her discretion by not allowing Al Lungowski from A.A to testify about being a sponsor for E.J. after the adoption petition was passed in the unfitness hearing (Vol 4 of 6, R158, ln1-3) but allowing the testimony of Christine Foley (vol 1 of 1, 11/17/98, R70 ln14-16) who had been on L. J's case since September of 1997, over one year after the petition had been passed May 10, 1996 (Vol 1 of 2, 1/8/99 C 65) None of the caseworkers in the time period from adjudication to passing of the adoption petition testified in court for the best interest hearing because of the continuance denial. In Lehr v. Robertson 463 U.S. 248, 261-262 (1983) clearly that fathers who have participated in raising their illegitimate children and have developed a relationship with them have constitutionally protected parental rights:

II.. It was an abuse of discretion by the trial court judge and appellate court when they: 1. allowed the return of visitation to be determined by the wishes of the foster parents instead of the interpretation of state law (A special appeal to the appellate court for reinstatement of visitation is found in "Appendix E") and 2. when no consideration was given to open adoption for the birth parent E. J. since the only reason for being unfit was failure to make reasonable progress for the return of the children due to his parenting skills. Mathews v. Eldridge, 424 U.S. 319,335, 96 S. Ct.893,903,47 L. Ed.2d 18 The nature of the process due parental rights termination

proceedings turns on balancing three factors: the private interests affected by the proceedings; the risk of error created by the state's chosen procedure; and the countervailing governmental interest supporting use of the challenge of the procedure

At the Best Interest Hearing, on April 7th, 1998, the trial court, Judge Mulhern presiding, made the decision to continue visits through Catholic Charities or the foster parents if the foster parents so chose (Vol 1 of 1, November 17th, 1998 R 52 ln 13-20). C.C. decided separately to discontinue visits thereafter because the adoption had been completed in the trial court. E. J. was not allowed the foster parents telephone number to call.

In re Workman 390 N.E.2d 900 for the proposition that paragraph 1521 of the Illinois Adoption Act must be read as providing that an interim order terminating parental rights severs the parent-child relationship after the expiration of petitioner's right to appeal the order. As this order is still under appeal, petitioner argues visitation can still be returned if the writ of certiorari is granted In Michael H .v. Gerald D.491 U.S. 110, 145 it reads the appropriate level of scrutiny in determining wether statue violates due process is rational basis test when statue under consideration does not affect fundamental constitutional right; courts will subject legislation to strict scrutiny if law impinges upon fundamental right U.S.C.A Const Amend 14

The above rulings by Judge Mulhern has virtually left all visitation at the discretion of the foster parents during the appeals process. The foster parents have not made a good effort or decision in not allowing contact between father and daughter to occur. Since L. J. was never told she would not be seeing her father for a long period of time, it prevents her from maintaining or continuing a her healthy mental relationship with him as recommended by Dr. Anson in her bonding assessment.(Vol 7 of 9 TE 196)or "Appendix G pgs. 74-75". It is also detrimental because it allows bonding to occur which is deceitful and hurtful to L.J. This in itself is violating the minimum

parenting requirements the state is trying so hard to preserve 89 Illinois Administrative Code Chapter 111, Sec. 304.2 .found in "Appendix F pg 45"

. Smith v. Organization of Foster Families, supra, at 862-863, 97 S. Ct. At 2119 (Stewart J. Concurring in judgement) The interests of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment." In Caban v Mohammet, 441 U.S. supra at 392 reads " When an unwed father demonstrates a full commitment to the responsibilities of parenthood by "com[ing] forward to participate in the rearing of his child , he therefore has a liberty interest, entitled to protection under the Due Process Clause of the Fourteenth Amendment, this interest in personal contact with his children acquires substantial protection under the Due Process Clause. In Harris v. Manor Healthcare Corp. 489 N.E. 2d 1374,1375 We first ask whether the person claiming constitutional protection has an interest that the Constitution recognizes; if we find that he or she does, we next consider the State's interest in limiting the extent of the procedures that will attend the deprivation of that interest . And in In Addington. 441 U.S., at 427, 99 S. Ct. At 1810 " the individual should not be asked to share equally with society the risk of error, when the possible injury to the individual is significantly greater than any possible harm to the state. Thus at a parental rights termination proceeding, a near-equal allocation of risk between the parents and the State is constitutionally intolerable."

Petitioner argues visitation should be maintained until all parental rights are severed by the court by a mandate because all appeals are exhausted. and guided by the endangerment standard Woods v Woods 498 NE2d 906. The court is in error where it restricts a parent's visitation rights where the court does not make the requisite finding that the visitation will seriously endanger the child's physical,. mental , moral or emotional health but rather, the

court finds that the restriction in visitation is in the best interests of the children. This relationship between E. J. and his daughter L. J. should be maintained. In all the rulings of visitation on L. J., there never was any reason given to stop visitation due to a endangerment standard

In Quillion v Wolcott ,434 U.S. 246, 255, 98 S. CT. 549,554, 54 L.Ed.2d 511 (1978) and Stanley v Illinois, 405 U.S. 645, 651-652. N92 S. Ct. 1208,1212.,1213,31 L.Ed. 2d 551 (1972) The absence of dispute reflected this Court's historical recognition that freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment.

State statues as In Lael V. Warga 508 N.E. 2d 1095 Although a parent may be unfit to have custody of children, it does not follow that parent is unfit to remain children's legal parent with attendant rights also In re Hurley (1976), 44 Ill. A.. 3 d 260, 2 Ill. Dec. 595, 357 NE 2d 815) and In Interest of Otto B. 393 N.E. 2d 676 indicate there is a chance for visitation even after a parent has been found unfit. Petitioner requests the court to review. Mathews v. Eldridge, supra,424 U.S., at 343, 96S. Ct, at 907 Courts must examine all procedural protections offered by the State, and must assess the cumulative effect of such safeguards. As we have stated before, courts must consider" the fairness and reliability of the existing... procedures" before holding that the Constitution requires more" and Lehr v Robertson, 463 U.S. supra, at 261.

The trial court Judge Mulhern admitted herself that she was unaware of any case law that indicates that a parent can have custody or visitation rights after their rights have been terminated (Vol 1 of 1, Nov. 17th, 1998, R22 ln18-ln19) Michael H.V.Geralald 491 Us 145(1989) Brenan J. Dissenting The plurality's exclusive rather than inclusive definition of the "unitary family" is out of step with our decisions as well. This pinched conception of " the family" is jarring in light of our many cases preventing the States from denying important interests or statuses to those whose situations do

not fit the government's narrow view of the family.

III. It was an Equal Protection violation for putative parents and family and a violation of the 14th amendment when A. no recorded interview of L. J's wishes about adoption were made

It was not in the best interest of L. J. to be adopted when her fathers rights to custody and visitation were lost due to termination of parental rights because all safeguards to protect her rights to her birth family which are also protected by the 14th amendment of the Constitution were not taken or provided by the Catholic Charities agency or the State of Illinois.

This included: 1. L. J.'s right to an interview with regard to her preferences of custodian or visitation in re 3 Illinois Family Law and Practice reads at annotation 9.322 The requirement hat interview of a child be recorded cannot be waived by the parties Custody f Krause Ill. App.,444 N.E. 2d 647 Subsection (2) directs the court to consider the wishes of the child as to his custodian, in 750 ILCS 5/602 (a) (2) A child's preference is an important factor in deciding custody, In Deyoung v. Deyoung 379 N.E. 2d 399 at (9) The law requires that competing custody be resolved in accordance with the best interest of the child, and the places upon the court the burden of determining where the interest resides. At 3-5) The second sentence says that counsel shall " shall be present unless otherwise agreed upon by the parties " thus expressly allowing the parties to waive the right to have counsel present. The third sentence states that the " court shall causes a court reporter to be present " This provision does not authorize a waiver by t he parties and we believe the imperative " shall mandates that a record be made of the interview) Records of in chambers interview of child to ascertain child's wishes as to his custodian and as to visitation is mandatory and cannot be waived by the parties In re Marriage of Ronald R. Slavenas 487 N.e2d 739 and at 741 (3,4)

It was therefore error to conduct the interview without making a record. The father of L. J. believes that this interview is additional

evidence to reverse the adoption or to grant visitation. People v. Fierer 529 NE 2d 972 constitutional errors must be shown to be harmless beyond a reasonable doubt

IV.. It was a 1st amendment violations when L. J.'s adoption was completed across religious faith and ethnic heritage, in this case without compelling evidence and consent of the birth parents.

This case is an unsupported adoption by the birth father across religious lines. (Vol 6 of 9, TE 111 11/7/94, TE 186 10/18/95, TE 244, 04/09/96, Vol 7 of 9, TE 47 10/08/96, TE 84 4/7/97) The birth father was Methodist and the adoptive parents were Catholic. In Family Law Quarterly, Volume XXV, Number 2 Summer 1991 adoption across religious lines is further discouraged by imposing an additional procedural requirement; if adoption is granted a person of a religion different than that of the child, the court must recite for the record the facts that compel the decision also in re Santos 105 N.Y. S. 2d 716 3 and In 331 Mass. 647.121 N.E. 2d the court held that the children had a natural and legal right to their religious faith, which temporary exposure to another religion could not erase Family Law Quarterly, Volume xxv, Number 2, Summer 1991 (Adoption denied to Jewish couple who had custody for three years of twins born to Catholic mother.) Also in 66 ALR 2d 1410 Religion as a factor in awarding child custody

The agency Catholic Charities falsified their reports in order to present evidence that would support adoption of L. J. to a different religion, ethnic and racial heritage due to their budget and financial reasons (Appendix l, pg 30). This allowed the agency to use bonding of L.J. to the foster parents as the compelling evidence to terminate parental rights without giving compelling evidence that will support adoption across religious , racial, ethnic and without consent of the parent This reporting continued even after E.J. had L. J. baptized Methodist and is evidenced in all the case review reports except the first (Vol 1 of 9, C88) from after the first report of this case until the end under placement listing (Vol 6 of 9, TE 111 11/7/94, TE 186

10/18/95, TE 244, 04/09/96, Vol 7 of 9, TE 47 10/08/96, TE 84 4/7/97)a copy of one report is found in(Appendix L, ;pg 30)

At the best interest hearing, Christine Foley even testified that the only requirement for the foster parents was to be Catholic(Vol 1 of 1, 11/17/98, R5 ln1-12) In Lemon v.Kurtzman 403 U.S. at 612, a ""practice which touches upon religion, if it is to be permissible under the Establishment Clause, " must not inter alia, " advance [or] inhibit religion in its principal or primary effect."Although, in refining the definition of governmental action that unconstitutionally ":advances" religion, the Court's subsequent decisions have various

y spoken in terms of "endorsement", "favoritism", preference," or"promotion," the essential principle remains the same: the Clause , at the very least, prohibits government from appearing to take a position on questions of religious belief or from "making adherence to a religion relevant in any way to a person's standing in the political community.

V. It was a violation of Due Process and Equal Protection when special investigations child custody evidence was improperly used, in violation of state statue and federal law when used as the manifest weight of the evidence for the determination of unfitness of the father E. J. and in the best interests of L.J. The sole criteria for selection of parents for this evaluation was wether they had been diagnosed as mentally ill in the past. (Vol 3 of 9, TE 142) Governor Edgar of the State of Illinois mandated that a commission to assess the parents of parents suspected of mental illness and the parenting assessment team was a result of this commission. (Vol 7 of 9, R 155).

This is evidenced by the assessment made by Laura Miller, psychiatrist, and Teresa Jacobson, psychologist.(Vol 2 of 9 , R 159). Psychological and psychiatric reports were very negative and supported the finding of unfitness based on a mental illness or impairment of the father E. J.. It's admission as evidence was

entered in the unfitness portion of the trial(Vol 1 of 1, 11/17/98 R 26 ln21-R 27 ln24) . Ballweg v. City of Springfield 499 N.E. 2d 1373 Evidentiary error, namely the improper admission or omission of evidence is important ground for a new trial when the error was prejudice People v. Fierer 529 Ne 2d 972 constitutional errors must be shown to be harmless beyond a reasonable doubt.

This same parenting assessment was also presented in its original purpose as to provide recommendations for the father to improve his parenting skills (Vol 2 of 6, R 122, ln 15-16)(SR 1 of 2 1/8/99 C 83 ln 12-19)(Appendix L, pg 13) The petitioner was also informed that this assessment or team would not be used to make decisions about custody but was only to determine 1.what the parent could and could not do to improve parenting problems and to help develop the best possible service plan to improve the parenting ability of the parent This is evidenced by the pamphlet given to the petitioner before the assessment (SR 1 of 2, 1/8/99 C 85). As these parenting assessment reports were used as evidence in court along with testimony to find the father unfit and to terminate his parental rights , this petitioner believes it is a violation of due process through fraud and is reversible error to invalidate this adoption In Regenold v. Baby Fold, Inc., 42 Ill. App. 3d 39, 355 N.E. 2d 361 (1976) if it is a violation of due process through fraud, it is reversible error so as to invalidate an adoption

The main coordinator of the Parenting Assessment Team, Kathy Pesek who worked fro the Thresholds for Mothers project which only provided services for women had 1. no prior or previous training at evaluating the parenting capabilities of parents for the improvement of their parenting skills (Vol 4 of 6, R 98 ln 20-24, R 99 ln 1-7), and 2. No experience for evaluating fathers (SR 1 of 2, C 84-88 3. No training in evaluating emotionally disturbed adults (Vol 4 of 6, R 93)(Appendix L, pg 19).This in violation of 42 USCS annotation 5103 In her case report summary and in trial court testimony she testified that nothing could be done to improve

E. J. s parenting skills

But Mr. Harrison, E.J.'s therapist and the head supervisor of the Counseling Center testified at the unfitness hearing that it was not the standard of the medical health industry that nothing could be done to help a patient (Vol 8 of 9, TE 129).

A review of the record and the appellate court final order will show The manifest weight of the evidence presented by the state was from 1. the entire parenting assessment team report cover to cover, 2. a clinical Services report done by doctor Reebe which was over three years old (ordered by the court and completed by a state psychologist), 3. a psychiatric evaluation of the father by Doctor Tepas (Vol 4 of 6, R 128 ln 17- R 129 ln 14)which was over 6 years old, and 4 The head coordinator, Kathy Pesek of the parenting assessment team and the caseworkers, Julie Yalowitz and Christine Foley all had no training in evaluating parents for parenting skills but were responsible for determining reasonable progress in parenting skills for E.J(Appendix L pgs 19-20) What knowledge they had was learned from the experience of their jobs which all had recently started.,(Vol 4 of 6, R 98 ln 20-24, R 99 ln 1-7),(Vol 3 of 6, R 70 ln 10- 14, R 72 ln 5-10), (Sr 1 of 2 1/8/99 C 109)(Appendix L, pg 19-20)..In Loitz 532 N.E. 2d at 1103 It reads that it is the principle that the credibility of the expert and the weight to be assigned to the experts opinion are matters to be decided by the trier of fact in light of the expert's credentials and the basis for the expert's opinions. And 5. The State's only family therapist witness ,Minna Greene had never seen E. J. with L.J (Vol 5 of 6, R226 ln10-24) In Kubisz v. Johnson 329 N.E. 2d 815 Where there is failure to produce clear and convincing evidence that parent is unfit within statutory definition, reversal of order terminating parental rights is proper. In 34 POF 2d 424 Child Custody at 34-407 annot.10 Use of investigators In some jurisdictions, the court may have an independent investigation made in court proceedings, by virtue either of statutory authorization or the exercise of the

may have an independent investigation made in court proceedings, by virtue either of statutory authorization or the exercise of the court's discretion, in order to obtain information needed by the court to make its decision. As to the weight to be given the results of the independent investigation, on the one hand they are advisory only and may be disregarded by the court. On the other hand, they may not be made the conclusive basis of the court's decision, since that would mean that the court would be delegating its power to decide questions of child custody, and the court may not do that

VI. Petitioner seeks review of the final judgement for unfitness of the father E. J. by the lower courts. The Preponderance of the evidence shows that E.J. was: thwarted by the non-efforts and efforts of the Caseworkers and therefore was not able to make reasonable progress for the return of L. J. by following DCFS directives and 2. that E. J. made reasonable progress for the return home of L. J. by the benchmark of progress by the correction of the reasons why the case came into care.

The state of Illinois had recently started reorganization of DCFS by providing an incentive plan for their agencies to reduce the over bloated system of abuse and neglect cases (Appendix L pgs 7-9) . Directly related to recent tragic cases of children in care returned home who were murdered called the Amanda Wallace and Frank Torres cases. Governor Edgar from Illinois mandated a special investigation team for this purpose. Petitioner argues agency goals and caseworker reports were oriented for adoption because of these incentives;

The father of L. J. was found unfit using evidence that the state had created through their evaluations and caseworker testimony as the manifest weight of the evidence instead of using the benchmark measure of progress from when the case came into care and progress made within 12 months

This case is a perfect example of the conflict in jurisdictional interpretation of the determination of unfitness statues. This being the

compliance to Catholic Charities directives and court orders of the 4th district In re L.L.S., 218 Ill. App 3d at 461, 577 N.E. 2d at 1387

Substantial evidence exists that E. J made reasonable progress if it would have been determined by an objective judgement, The bench mark for measuring such progress is the situation which triggered the initial removal of the children. In re M.C. 201 Ill. App.2d 792 , 559 N.E. 2d 236 ,239 (1st Dist 1980) s. Also in re Interest of L. N. 278 Ill. App. 2d 50-51 and In re S. J. 233 Ill. App.3d at 121, 598 N..E 2d 477 The ultimate issue is the reasonableness of the progress that the parent has made, in light of all the circumstances in " moving beyond the parental deficiencies that led to initial removal of the child.

. In Interest of A.T. 555 N 2d 409 it reads the first interpretation of unfitness must be based solely on parenting efforts or progress during the period beginning with adjudication and ending 12 months thereafter. The second interpretation must be based upon parenting efforts or progress made during the entire period between adjudication and filing of the termination petition. Under this latter interpretation, the length of the period is not limited by the statue.

. L. J.'s case came into care on 2/8/94. (Vol 1 of 9, R 18). Adjudication was on 3/28/95 where she was found abused due to injurious environment (Vol 1 of 2, 1/8/99, C 26). The supplemental petition for appointment of a guardian with right to consent to adoption was filed on May 10, 1996 (Vol 1 of 2, 1/8/99 C 65)..

Benchmark arguments that reasonable progress was made were: 1. the charges of mental illness were dropped , (Vol 1 of 2, C 10) (Vol 2 of 6, R 136)"appendix G pgs 131-132 " (SR 1 of 2, Jan. 8th, 1998, C 90-93)(Vol 2 of 6, R 180)(Vol 8 of 9, Te 137)(SR 1 of 2 Jan, 8th, C 94). . 2 E.J. stopped seeing the mother of L. J. as she would no longer cooperate with DCFS in the return home of L. J. and as it was recommended by Catholic Charities as

of L. J. as she would no longer cooperate with DCFS in the return home of L. J. and as it was recommended by Catholic Charities as a condition for reasonable progress for the return home of L. J. .Interest of Austin Cite as 378 .E.2d 543 [5] Because it is impossible to measure progress without referring to a prior status, current status and the process by which movement from the one status to the other occurred, absence of evidence regarding the prior status would render a determination of" reasonable progress" meaningless In re Perez 528 N.E. 2d 815 A trial court's findings of parental unfitness in a proceeding to terminate parental rights and appoint a guardian with authority to consent to adoption will not be reversed by appellate court unless finding of unfitness is against the manifest wight of the evidence.

Catholic Charities began to concentrate on parenting skills for E.J. by creating objectives for parenting for and demanded strict compliance to them. This allowed CC was who was providing the only workers monitoring L.J.'s case due to a recent restructuring of the Department Of Children and Family Services full control over active case management (Appendix L pgs 7-9) , In re L.L.S., 218 Ill. App 3d at 461, 577 N.E. 2d at 1387 which erected the standard that progress is measured by the compliance with the court's directives, DCFS service plans or both such that the court will be able to return the child to the parent in the near future. This standard has been criticized as too mechanical: These plans are a means to an end, not an end in and of itself. In re S.J., 233 Ill. App. 3d at 121, 598 N. E.2d at 477 (" To place compliance with DCFS plans ahead of the ultimate fact of progress would be to let the tail wag the dog") Furthermore, there exist a danger of "bootstrapping" which would occur if the parents fails to do things on a service plan which were not necessarily related to previous shortcomings.

Petitioner argues that he was thwarted by the efforts of the caseworkers In re Bentsen v. Bentsen 412 N.E. 2d 1167 It shall be an affirmative defense to any allegation that father's failure was due

to circumstances beyond his control or to impediments created by the mother or any other person having legal custody. Proof of such fact need only be a preponderance of the evidence. Evidence to support this that was overlooked by the appellate court was found in L.J.'s arguments to the appellate court found in "appendix G pgs. 122-130, 170-183" and " Appendix J pgs 220-230" This included irregular visitation schedules, untimely offering of services, passing on false information with regards to services offered and E.J.'s progress (especially indicating parenting classes taken that were never offered Appendix L 24-27), false representation in case reports, statements such as foster family is of same religion and ethnic background (Appendix L pg 30) and that there was a court order that father was not supposed to be with mother, also canceled case reviews(Appendix L, pg 29).Again this is in total violation of 42 USCS annotation 5103 at (B)(1)& (2) (D) The appellate court erred when it said there was no evidence in the record to support the above statements "Appendix A, pg 17-18"

Both the Guardian and the State testified that E. J. had undeniably made the efforts (Vol 5 of 6 R 219 ln 21-R 220 ln 21), but the bottom line was that he could not parent because his efforts were unsuccessful.(Vol 5 of 6, R 220 ln 22-R 222 ln 22). The law emphasizes that it is the efforts of the parent to carry out parental responsibilities, rather than their success, which should be considered in determining the correctness of a finding of unfitness In Interest of Drescher Ill. App. 415 N.E. 2d 641. Also In re Woods (1st Dist 1977,54 Ill. App.3d 729, 735, 12 Ill. Dec. 342, 369 N.E. 2d 1356) This is where the lower courts have erred.

An abuse of discretion without a doubt is proven by following the final judgements of Judge Mulhern. which was not clear and convincing"Appendix B2-B3". In interest of L.L.S 577 Ne 2d 1387 a reviewing court will not substitute its judgement for that of the circuit court unless an abuse of discretion is shown. In Kubisz v. Johnson 329 N.E. 2d 815 Where there is failure to produce

clear and convincing evidence that parent is unfit within statutory definition, reversal of order terminating parental rights is proper. In the judgements of judge Mulhern these errors included 1 that Luella was born at home to keep her his from Catholic Charities. Substantial evidence is in the record to show she was taken to the hospital immediately after birth (Appendix L, pg 21) and a letter was written to DCFS telling them of her birth.(SR 1 of 2 January 8th, C 57 C 112-140)(Vol 1 of 6, R 103) 2 Luella was abandoned by her mother when she was really taken by DCFS for fear of risk of harm and .(vol 1 of 1, 11/17/98, R70 ln14-16)(Appendix l pg 10) 3. Assumed Minna Greene saw E.J. with L. J. when she never did (Vol 5 of 6, R226 ln10-24) 4. Incorrectly assumed the strikingly similar instances of failure to make reasonable progress were the same in the older sister case as L.J.'s. In the order of the termination of parental rights of the older sibling sisters E.O. and F.O. termination is affirmed for failure to make reasonable progress largely due to the chronic personality disorder of E.J (Appendix L pg 12). wherein the case of Luella J. all charges of mental disability or personality disorder for failure to make reasonable progress had been dropped., (Vol 1 of 2, C 10) (Vol 2 of 6, R 136)"appendix G pgs 131-132 " (SR 1 of 2, Jan. 8th, 1998, C 90-93)(Vol 2 of 6, R 180)(Vol 8 of 9, Te 137)(SR 1 of 2 Jan, 8th, C 94). .

VII. It was a violation of the 14th amendment with the termination of parental rights solely for the reason of failure to make reasonable progress and without consideration of open adoption and compelling evidence.

The Preponderance of the evidence indicated it was not in the best interest of L. J. to be permanently separated from her father permanently through adoption and no compelling evidence presented was clear and convincing

State evidence was a bonding assessments done by Amy Anson of Michael Reese Hospital (Vol 4 of 6, R 128, ln 7 - 16), the parenting assessment team report and testimony of caseworker

Christine Foley.. State Law that is applicable to the weight of this evidence is read in Blakey v. Blakey 391 N.E. 2d 222 the inability to nurture or interact is not a proper statutory basis for the removal of children in this state. The children were originally take away because of the injurious environment and the parents should not have their parental rights terminated for these other nebulous, uncharged reasons. To decide otherwise would allow the state to terminate parental rights for non-statutory reasons which were originally uncharged and which parents have no reason to know are possible bases for the removal of their children. In Cebrzynski v. Cebrzynski (1978), 63 Ill. App.3d 66,72,19 Ill. Dec. 841,379 N.E. 2d 713) In a custody dispute between a natural parent and a third person, the latter must demonstrate a " compelling reason" why the natural parent should not be granted custody of a child. In Re Custody of Krause cite as, Ill. App., 444 N.E. 2d 647 Six factors for custody determination subsection (1) thereof states that the wishes of the child's parent or parents as to his custody is one of the relevant factors., subsection (2) directs the court to consider the wishes of the child as to his custodian, subsection(3) is the interaction and interrelationship of the child with his parent or parents, siblings, and any other person who may significantly affect his best interest, subsection (4) lists the child's adjustment to his home, school and community as a relevant factor for consideration., subsection (5) directs the court to consider the mental and physical health of all the individuals involved, subsection (6) allegations or threats of physical violence.

In this case terminating parental rights solely for the reason of failure to make reasonable progress without compelling evidence was not clear and convincing..In Perkins v. Breilbarth 424 N.E. 2d 1361 Natural parent has superior right to custody of his children as against others; this inherent right should not be abrogated absent compelling reason.'

In Volume 1 of 1, 11/17, 1998, ln6- Christine Foley , the

only witness at the best interest hearing, testifies " Luella living with you is not a viable option at this time. You have already been found an unfit parent.****that's the only reason?**** "That's the only reason***the only reason on they should not be living with E.J

Conclusion.

The above argued due process, equal protection, 14th amendment violations, and 1st amendment violation will also prove how the lower courts has overlooked or misapprehended this evidence that was presented to them, The evidence being 1.religious discrimination.. adoption across religious faiths not condoned by parent or with compelling evidence 2. mental health. discrimination by use of a report based on mental health that was fraudulently represented as being used to determine what could be done to improve parenting skills 3. visitation and custody with regards to illegitimate children's rights...no court recorded interview was made of the petitioner's daughter Luella Jones on with regards to her preferences of custody and visitation rights and 4 putative father's rights before and after adoption has been finalized....especially with regards to visitation and legal custody pertaining to open adoption

For unfitness finding, the father E. J. was thwarted by the efforts of the caseworkers and others involved with the return of L. J. for which there is substantial proof. . This is largely due to caseworker personal error that virtually puts the determination factors for unfitness of the parents of children accused of abuse and neglect soley in the hands of a privately run religious agency and whoever they hire.

In the best interest of L. J. no compelling evidence was presented by the state which would allow 1. No interview being made of L. J's wishes, 2 allowing adoption across religious faiths. .3 the adoptive family to be of different ethnic heritage and race.

There is also conflict in jurisdictional interpretation of the determination of unfitness statues This being the benchmark for

progress of the 1st district versus 4th district's strict compliance to court directives and DCFS service plans with Catholic Charities as their representative agency. Especially determining wether the manifest weight of the evidence should be measured by the evidence produced by the states or by the progress made from the conditions that brought the case into care.

Further review and legislation is also needed that will allow the return of a child on a joint custody basis when there has been no evidence proven of severe mental , emotional or physical abuse of child by the parent only a lack of parenting skills.. This on the lines with that in Lael V. Warga 508 N.E. 2d 1095 and In re Hurley (1976), 44 Ill. A.. 3 d 260, 2 Ill. Dec. 595, 357 NE 2d 815) Although a parent may be unfit to have custody of children, it does not follow that parent is unfit to remain children's legal parent with attendant rights. Roe v. Wade, 410 U.S. 113, 93 S. Ct 705, 35 L.Ed.2d 147 This court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment Petitioner requests that some form of open adoption be granted

Petitioner prays that this Court grant his request for Writ of Certiorari Respectfully submitted,

Eugene Herman Joneson
11732 S. Prairie
Chicago, Illinois 60628

(2)

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

NO

IN THE SUPREME COURT OF THE
UNITED STATES
October term 2000

EUGENE JONESON-PETITIONER
VS.
THE PEOPLE OF THE STATE OF
ILLINOIS

IN THE INTEREST OF
LUELLA JONESON

On Petition For Writ of Certiorari to the United States Court For the 1st District of Illinois

PETITION FOR WRIT OF CERTIORARI OF EUGENE HERMAN JONESON APPENDIXES A1- F

Eugene Joneson
Pro Se
11732 S. Prairie
Chicago, Illinois 60628
773-568 -4132

Date August 8th, 2001

62 pp

In The Appellate Court of Illinois
First Judicial District

In re L.J., a Minor,	)
(THE PEOPLE OF THE STATE	)NO. 98-3336
OF ILLINOIS)	)
Petitioner-Appellee	)
V.	)
Eugene J.,	)
Respondent-appellant	)

ORDER

Having examined the record and reviewed the briefs, this court being of the opinion that oral argument is not necessary;

IT IS HEREBY ORDERED that the above captioned case will be considered without oral argument, pursuant to Supreme Court Rule 352(a) as amended.

Order Entered
June 27th, 2000
Appellate Court,
1st District

Justice -s/ P.J. Theis
Justice s/ J. Hartman
Justice s/ J. Quinn

"Appendix A-1"

Fifth Division

June 30, 2000

NOTICE

The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the discretion of the same

1-98-3336

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re L. J., a Minor,	)
(THE PEOPLE OF THE STATE	) NO.94 Ja 1107
OF ILLINOIS)	)Appeal from
Petitioner-Appellee	)The Circuit
V.	)Court of Cook
Eugene J.,	)County
Respondent-appellant	)Honorable
	) Mary A .Mulhern
	) Judge Presiding

ORDER

Following separate hearings, the circuit court found that respondent Eugene . Was an unfit parent and that it was in the best interest of his minor daughter, L.J. to terminate respondent's parental rights and allow L. J. to be adopted by her foster parents. On appeal, respondent contends, pro se, that the court's finding that he was unfit was against the manifest weight of the evidence, and that the State failed to present clear and

convincing evidence that it was in L. J.'s best interest for respondent's parental rights to be terminated.

Respondent's daughter, L. J. was born January 30, 1994, at the apartment that respondent shared with he child's mother. The circuit court awarded temporary custody of the infant to the State on February 14, 1994, after finding that both respondent and L. J.'s mother were mentally ill and unable to care for her. On March 28, 1995, the court found that L. J> was neglected due to an injurious environment. She was adjudicated a ward of the court on June 21, 1995, due to the court's finding that respondent was unable to care for, protect, train, or discipline her. A petition for termination of respondent's parental rights was filed on May 10, 1996, alleging that both parents failed to make reasonable progress toward L. J.'s return home.

At the fitness hearing, Julie Yalowitz testified that she was a child welfare specialist with Catholic Charities. L. J.'s case was assigned to her in January 1995. She testified that L. J. Came into State care in February 1994, after being born at home. Respondent and L. J.'s mother had two older daughters, who were placed in foster care after their mother abandoned them. When the Department of Children and Family Services (D.C.F.S.) was made aware of L. J. 'S birth, a caseworker went to their home and found that the child had been born at home, was being fed adult food, and was therefore at risk of harm

The first DCFS service plan for this case was established in November 1994. The goal of that plan was long-term foster care due to respondent' lack of

progress and the status of his older children's cases. In March 1995, L. J. was adjudicated a ward of the court after she was found to have been neglected due to exposure to an injurious environment, and another service plan was created in April 1995 The April 1995 service plan also recognized long-term foster care as the goal of the plan. The tasks outlined in the April plan were the same tasks outlined by the original plan. Under that plan, respondent was to attend Alcoholics Anonymous (AA).meetings, counseling sessions, and a parenting class. The plan was to address issues related to respondent's difficulty providing structure for L. J. and engaging her in age-appropriate activities. When the second service plan was created, respondent was rated unsatisfactory on the goals of the first plan because he was no regularly attending therapy sessions and was not addressing the problems in the first plan

Yalowitz also testified that she observed respondent during visits with L. J. Respondent was initially allowed to visit L. J. twice a month. Yalowitz testified that respondent had difficulty engaging L. J .in age-appropriate activities, and would bring an overwhelming number of games and toys to the visits. She said that many of the games and toys were not age appropriate, and that respondent would feed L. J. constantly during visits. Yalowitz testified that respondent was not able to change L. J.'s diaper on "numerous" occasions, nor was he able to read L. J.'s verbal or nonverbal cues and address her physical or emotional needs. She testified that when L. J. cried, respondent often made statements like, "I'm frustrated

too, that we can't be together all the time; I know that you don't want to leave me" instead of identifying the reason that L. J. was crying

The next service plan was entered into in October of 1995. The goal of that service plan was also long-term foster care because respondent again failed to make significant progress on the tasks outlined in the April 1995 service plan. Though respondent had begun counseling sessions, his visits with L. J. continued to be "chaotic and disorganized" She note that during one visit, respondent left a sharp knife within L. J.'s reach after using it to cut food. L. J.'s older sisters moved the knife out of her reach. During another visit, respondent began to place a plastic bag over L. J.'s head to use as a bib. When Yalowitz stopped him, he said that he was going to cut a whole in the bag so it would fit the baby's head. Yalowitz testified. Yalowitz testified that when she tried to direct respondent on safety issues, he became hostile and argumentative, and would often say "they just don't let us have fun*** I always have to clean up because we can/t have any fun." Respondent was not able to assimilate the advice given to him during visits, and continued making the same mistakes in following visits. Yalowitz testified the L. J.'s safety was continually compromised during her visits with respondent due to his failure to properly supervise her.

Another service plan was entered into in April 1996. The goal of the plan remained long-term foster care. Yalowitz testified that it was decided that the case should proceed toward termination

of respondent's parental rights soon after that plan was created. That decision was fueled, in part by a parenting assessment test completed by respondent which concluded that no amount of intervention would be sufficient to help respondent with his parenting deficiencies

Though respondent continued to attend counseling sessions, he began seeing a different counselor because his original counselor told him that she would not recommend that the children be returned to his care. Respondent was asked to leave the parental support group that he was attending due to inappropriate, and sometimes hostile behavior, but was then referred to a parenting skills class which he completed. However, Yalowitz testified that he failed to show any improvements in his parenting abilities

In September 1996, the visiting schedule was changed so that respondent saw L .J. only once a month. Another service plan was entered into in October 1996, with the goal remaining long-term foster care. Respondent continued to bring age-inappropriate toys to the visit.

He continued to become hostile when Yalowitz gave him directives during the visits and often displayed hostility against the caseworkers in front of the children. Yalowitz testified that this occurred at more than one-half of the visits. As L. J.'s needs became more complex, respondent had difficulty meeting her needs and keeping her activities controlled. L. J.'s sisters were often more responsible for supervising her than respondent was. Yalowitz testified that she saw no

progress in respondent's parenting skills from the time that she was assigned to the case to the time that she stopped working on the case, in September 1997.

During cross-examination, Yalowitz admitted that respondent completed all of the services to which he was referred, but noted that he failed to show any significant progress in his parenting skills despite having completed the services. Yalowitz also conceded that respondent's therapist felt he was making progress during their sessions, but reiterated that they saw no progress in his ability to parent L. J. during the visits with her.

Minna Green, respondent's first counselor, testified next. She stated that she was a social worker and psychotherapist with the Salvation Army Family Services. Respondent was her client from July 1990 through July 1995. He requested services from her agency after his older daughters were placed in foster care. She observed respondent interact with his older daughters, and reported observing many of the same problems that Yalowitz noted. She stated that though she initially felt that respondent was making progress in his parenting skills, at some point he seemed to regress. She said that when she gave him suggestions, he seemed to feel that she was criticizing him. She noted that he had problems setting limits with the children, that he seemed oblivious to safety issues, and would get so absorbed in a task that he did not notice what the children were doing. Green testified that she remembered him telling her that he thought that children should " learn by themselves what's dangerous and

what isn't and that she noticed that when the children were in danger, he did not react. She had to discuss with him what kind of toys were age-appropriate for the children, but noted that he followed her suggestions

Green said that she was never sure that he fully understood how traumatic it could be for the older children to have to leave the foster home that they had lived in for years. She did not think that respondent was able to empathize with his children. She also found that respondent became less willing to abide by her suggestions and was getting angry and defensive. She testified that at the time that she stopped seeing him, she did not believe that the children should be returned to his custody because he lacked adequate judgement and could not empathize with them. Respondent stopped seeing her because she told him that she could not be an advocate for the return of the children to his custody.

Christine Foley, a social worker with Catholic Charities, also testified. She stated that she was initially assigned to work on the older girl's cases in February 1995. In September of 1997, L .J's case was assigned to her. She testified that she observed visits between L. J. and respondent, but saw no improvement in his ability to parent during the time the she was assigned to the case. She said that respondent was resistant to directives during visits, and was often became hostile toward her. Foley remembered that during one visit, he called her a "Nazi" in front of the children. She testified that he had difficulty engaging the children during visits, and often brought so many toys and activities that the visits became chaotic. He did not always monitor L. J.

while she was eating, and he would often have to be directed as to how to behave with the children.

Foley testified that she did not believe that he met the minimum parenting standards set by DCFS, was very much absorbed in his own feelings as opposed to the children's feelings, and had difficulty relating to his daughters emotionally. He was not able to provide any structure during the visits. She testified that despite reports from respondent's therapist that claimed that he was making progress, she saw no evidence of progress during his visits with L. J.. While she noted that he made attempts to make progress in his parenting skills, she felt that he displayed deficiencies in creating a safe environment for L. J., being attentive to her physical and emotional needs, and monitoring her activities.

Kathleen Pesek, a child development specialist with Thresholds Mother's Project, testified that she was part of a team that evaluates the parenting skills of DCFS clients who may be suffering from mental illness. This "parenting assessment team" consists of Pesek, a psychiatrist, and a child psychologist. The team reviews the entire DCFS file, interviews the parent individually, and then observes the parent with the child. Respondent was referred to the assessment team through DCFS, and the team completed an evaluation of him in February 1996.

After interviewing respondent, Pesek believed that he was unable to empathize with the children. She testified that he seemed more focused on his needs than on the children's needs. Pesek testified that at one

could handle the responsibility of parenting, and the children might be better of with their foster parents. She read excerpts from the team's report which indicated that they found that respondent experienced difficulty in taking another's perspective, setting appropriate limits, knowing how to interact appropriately with his children, and that he often attributed adult=like motivations to his children's behavior. She noted that he brought many gifts to the visits, despite the children's requests that he not do so.

Pesek also testified that respondent was not able to engage his children. During her observations of respondent with L. J. and the two older children, she noticed that the children "basically avoided him" and demonstrated an " insecure attachment", they relied upon one anther. She remembered that during one visit L. J. was "getting into" the plastic knife and bags that were in the room. Respondent did not notice, and one of the older children had to take them away from L. J.

Pesek also testified that, during her interview with respondent, he admitted to losing his patience and striking a toddler for whom he was babysitting. She testified that the questionnaires that respondent filled out indicated that he had a tendency to be extremely overprotective of older children, stating that a 15 year old should never be left alone, and that a 16 year old should have a parent with them 24 hours a day. Pesek testified that the team found that if the children were returned to respondent, there would be a high risk for neglect, and possible abuse. The team concluded that

it was highly unlikely that respondent's emotional health would change enough to allow him to parent adequately. She testified, "[respondent] would need individual psychotherapy that was so intense and so prolonged and protracted that to think that he would be able to make demonstrable progress in a reasonable amount of time to benefit his children is extremely unlikely." She noted that though her team disagreed with Tod Harrison, who was respondent's therapist, Harrison had never seen respondent interact with the children.

Finally, Pesek noted that the team diagnosed respondent as suffering from a "schizotypal personality disorder" She testified that this would interfere with his ability to parent in that it would reduce his level of cognitive and perceptive functioning.

Al Lungowski, respondent's AA sponsor, testified on respondent's behalf. He described AA's 12 -step program. However, he was not allowed to testify as to respondent's progress in the program because he was not respondent's sponsor prior to the time that the State filed the petition to terminate respondent's parental rights. He stated that he had only been respondent's sponsor for the six months preceding the hearing.

Dr. Martin Blackman, the director of pediatric neuropsychological services at Columbia Grant Hospital, also testified for respondent. He stated that he evaluated respondent in June 1997, and made a diagnosis of alcohol dependency in remission. He testified that he did not see respondent as having the

same personality disorder which Pesek's team diagnosed. He said that tests administered during his psychological evaluation of respondent indicated that he had an above average I.Q. Though Dr. Blackman indicated that respondent showed a strong desire to be a father, Dr. Blackman acknowledged that he did not evaluate respondent's parenting ability.

Todd Harrison, respondent's therapist, testified that he was a licensed clinical social worker for the Community Counseling Centers of Chicago. Respondent became Harrison's client in July 1995. At their first meeting, they established several issues for respondent to work on relating to how the children came into the State's care, his parenting, his feeling about the situation, and what respondent could do so that his children would be returned to him. Harrison also testified that Dr. Carolyn Childers a psychiatrist with his office, completed a psychiatric evaluation of respondent.

Harrison stated that respondent was never hostile or belligerent during their therapy sessions, and was always open to recommendations. They frequently discussed respondent's parenting skills, and ways to improve them. Harrison said the respondent reported progress in his visits with the children. Harrison also discussed respondent's parenting classes with him, so that they could review what he learned in the classes and how to apply what he learned to visits with the children. Harrison testified that he believed respondent progressed in his understanding of all of the issues they discussed. However, he admitted that he was in no

position to assess respondent's parenting skills because he never saw respondent interact with his children

Lynna Wilson testified that she met respondent at a parenting support group that they both attended. She stated that she and respondent both attended the parental support group until it was discontinued. However, she also admitted that she had never seen respondent interact with his children.

Finally, respondent testified on his own behalf. He stated that he completed all of the services that were recommended to him by Catholic Charities in an effort to have his children returned to him. He said that he applied the skills that he learned in parenting classes in his visits with the children. He stated that he never missed a visit with L. J., except those that were missed due to scheduling problems, weather, or L. J.'s illness. He testified that he never felt that his visits with her were chaotic and disorganized, that he always tried to make sure that the environment was safe for L. J., and that he did not participate in activities that were dangerous to her. He stated that he tried to be open to directives from the caseworkers, but that he stopped taking their directives when they tried to "[run] the visit," During cross-examination, respondent stated that though the trial court did not make a finding of unfitness in the older children's case, the appellate court reversed, finding that he was unfit

The circuit court found respondent unfit to parent L. J., stating: [Respondent's] inability to anticipate [L. J.'s] needs and to put her needs before his make him unable to parent and this inability has been

described throughout the case as being unable to read [L. J.'s] nonverbal cues. This means that [respondent] cannot be relied upon to meet [L. J.'s} needs for emotional support, nurturing or sometimes even her physical safety by anticipating or recognizing risks or problems that arise. The visitation history bears this out.

***

Every professional who has observed [respondent] with [L. J.] at visits, at evaluations, {and} in therapy *** concluded that he is unable to anticipate [L. J.'s] needs, to take care of them when they arise, and they conclude that he is unable} to assure that she will have the emotional and physical safety that she requires.

***

[T]here has not been measurable movement by [respondent] toward the goal of return home which is of such quality I would be able to return [L. J.] to his custody in the near future.

A subsequent hearing was held to determine whether it was in the child's best interest that respondent's parental rights be terminated and that she be adopted by her foster parents. At that hearing, Christine Foley testified that L. J. was placed with her foster parents in March 1994, shortly after she was removed form her parents' care. She stated that the foster parents met all of L. J.'s needs, and that L. J. had a loving relationship with the foster parents. She said that she did not see any evidence of a nurturing bond between respondent and L. J. during their visits, but that she did believe that

L. J. was bonded to the foster parents. She testified that the foster parents were in favor of continuing the relationship between L. J. and her siblings, that she did not fore see any problems in L. J.'s placement with the foster parents, and that she believed it would be in L. J.'s best interest to be adopted by the foster parents.

In addition to Foley's testimony, the State published portions of the parenting assessment teams evaluation, discussed by Kathleen Pesek at the first hearing, as well as a parental bonding assessment completed in February 1995 by Dr. Amy Anson at Michael Reese Hospital and Medical Center. The bonding assessment, much like Pesek's evaluation, indicated that L. J. had a strong "primary attachment" to her foster parents. While the report indicated that she used respondent as a source of comfort when she was distressed, Dr. Anson concluded :

"At this time, [respondent] is unable to provide the necessary interactional and emotional experiences [L .J.] needs for continued healthy development. Her basic safety may be compromised in {respondent's] care. ***[L. J.] clearly has a primary attachment with her current foster parents. She should continue to live in their home, and if possible be adopted by them, if and when it is determined that [L. J.} will not be returned to her biological father."

Respondent testified, stating that he believed that it would not be in L. J.'s best interest to sever his relationship with her and allow her foster parents to adopt her. He stated that he was the "central figure that's been with [L. J.] from the day that she was

born," and that while he believed that L. J. was bonded with her foster parents, the bond was not a "parent/child" bond but instead was a "caretaker" bond.

The circuit court concluded that it was in L. J.'s best interest to have respondent's parental rights terminated and tot be adopted by her foster parents. The court stated:

I believe that the evidence today convinces me that it is in]L. J.'s] best interest to have a permanent home with the [foster parents]. The testimony is clear that she is bonded to them; that she has lived there most of her life, from almost birth until she was four years *** and that to remove he would be very detrimental since she views this as being her primary care-giving family."

Respondent's appeals both the circuit court's finding that he was unfit and its order terminating his parental rights. He contends that the court's finding that he was unfit was against the manifest weight of the evidence, arguing that there was no clear and convincing evidence that he was unable to discharge his parental duties. He also contends the State failed to present clear and convincing evidence that it was in L. J. 's best interest for respondent's parental right to be terminated and for her to be adopted by her foster parents.

Respondent first contends that the court's finding that he failed to make reasonable progress toward L. J.'s return home was against the manifest weight of the evidence, he argues that L. J. was

originally taken into State care because of fears that he suffered from a mental illness. He claims that the State's decision not to pursue mental illness as grounds for termination of his parental rights is, in and of itself, indicative of progress.

However, while the State originally cited mental illness as justification for taking temporary custody of L. J., mental illness as was not alleged in the petition to terminate respondent's parental rights. During the hearing the circuit court indicated that the original allegations of mental illness were not at issue, and the court's decision clearly show that its finding was based upon respondent's failure to make reasonable progress with regard to deficiencies in his parenting skills. Respondent raised the same issues in his post trial motion, and the court specifically stated,"[i] n [L. J.'s] case *** you failed to make reasonable progress within a reasonable time. *** There was no finding with regards *** to any mental illness." Because a finding of mental illness did not form the basis of the trial court's fitness determination, respondent's argument is without merit.

Respondent also argues that the DCFS files entered into evidence at trial contained only those reports that were favorable to the State, that the caseworker reports were inaccurate, that the caseworkers were not trained in the basics of parenting skills, that the caseworkers were biased against him, that he was not offered the services he needed and that he did make reasonable progress.

Respondent's pro se arguments seem focused

on his beliefs that the caseworkers were involved in a conspiracy to terminate his parental rights and allow the foster parents to adopt L. J., without any regard to his ability to parent the child. This is not supported by any part of the record. Respondent was given many opportunities to show that he could make the kind of progress that would result in L. J.'s return home, but failed to do so. He participated in a number of parenting classes, and took full advantage of DCFS referrals for services, but could not apply what he learned in classes to his experience with his child

When the State filed the petition to terminate the respondent's parental rights, the Illinois Adoption Act stated that a parent could be found unfit if they failed to make reasonable progress toward the return of the child to their care within 12 months of the adjudication of neglect.. Ill 750 ILCS 50/1 (D0 (m) (west 1996) (amended by P.A. 90-28 such that the time period was shortened from 12 months to 9 months, effective June 25, 1997). The determination of whether progress is reasonable involves an objective standard based upon the amount of progress measured from conditions at the time custody was taken from the parent. At a minimum reasonable progress requires that the parent make a measurable or demonstrable movement toward reunification. In re M.C., 201 Ill. App. 3d 792, 798 (1990). A circuit court's finding of unfitness will not be reversed unless it is against the manifest weight of the evidence. In re A.S.B., 293 Ill. App. 3d 836, 843 (1997)

Objective evaluations of respondent with L. J.

reached the same conclusions that his caseworkers did, that he was not able to engage L. J.. Could not focus on her safety, and had difficulty empathizing with her and anticipating her emotional and physical needs. These evaluations continued to note the same problems years after respondent began receiving services designed to improve his parenting skills. From the time that L .J. was taken into care until the time that the petition for termination of respondent's parental rights was filed, respondent had over two years to prove that he could make the kind of progress that would result in the return of the child to his care. He failed to do so. Thus, the court's finding that respondent was unfit was supported by the manifest wight of the evidence.

Respondent also contends that it was against L. J.'s best interest for his parental rights to be terminated and for her to be adopted by her foster parents. The decision of wether termination of parental rights is in the best interest of child rests within the sound discretion of the court and will not be disturbed absent an abuse of that discretion. In re M.S., 302 Ill. App. 3d 998, 1003 (1999).

Respondent first argues that the court abused its discretion in refusing to grant him a continuance so that his witnesses could be present. A review of the transcript from that hearing shows that respondent did not request a continuance.

Before his attorney was allowed to withdraw from the case, the circuit court asked respondent, " You are willing to represent yourself, pro se; is that right?" Respondent answered, " Yes, I am," and the court

indicated that his attorney would be allowed to withdraw and that they would go forward with the best interest hearing. Respondent immediately began arguing his motion to vacate the court's finding that he was unfit, which the court denied. The record does not show that the court denied a request for a continuance, but instead indicates the decision to allow respondent's attorney to withdraw from the case was based on respondent's representation that he was willing to proceed with the hearing pro se.

Next, respondent argues that the circuit court failed to consider evidence showing the L. J. was of a different religion and nationality than her foster parents. Respondent fails to cite any Illinois case law to support his claim that this constitutes reversible error, and while the Juvenile Court Act of 1987 suggests that DCFS place a child, wherever possible, with a person holding the same religious belief as that of the minor, it is not mandated 705 ILCS 405/2-27(1.5) (West 1996). Furthermore, while respondent had L. J. baptized in the Methodist church and L. J.'s foster parents are Catholic, both churches are Christian denominations. Surely, the statue does not anticipate that DCFS would be required not only to attempt to place children in homes where the foster parents practice the same religion, but also in homes where the belong to the same denomination of that religion. Though respondent also claims that L. J. was placed with a family that was not of the same " nationality" (presumably, he means ethnicity, as all the parties enjoy United States citizenship), he again fails to cite any authority showing

that this constitutes reversible error.

Next, respondent contends that the circuit court would not allow him to question the State's witness with regard to the parenting ability of the foster parents. This is not supported by the record, which shows that both parties asked the witness a number of question related to the parenting skills of the foster parents.

Respondent's remaining arguments again refer to his beliefs that L. J.'s caseworkers were biased. As stated previously, we do not see any evidence of this in the record. Instead, the evidence clearly supports the circuit court's finding that it was in L. J.'s best interest for respondent's parental rights to be terminated. The evidence showed that L. J.'s strongest bond was with her foster parents, and that despite repeated attempts, respondent would not be able to improve his skills to the point that return of the child to his care would be a viable option. L. J. had already lingered in foster care placement for four years while respondent attempted to prove himself a fit parent. It was in her best interest to find that she should not have to continue to languish in the State system without a sense of permanency.

Accordingly, the judgment of the circuit court is affirmed.

Affirmed.

Hartman, J. M. with THEIS, P. J., and QUINN, J., concurring.

State Of Illinois } 0000147.2163
County of Cook} 98

In The CIRCUIT COURT OF COOK COUNTY,
ILLINOIS DEPARTMENT OF JUVENILE
JUSTICE AND CHILD PROTECTION
CHILD PROTECTION DIVISION

In The INTEREST OF No.94JA1107
Luella Joneson
(minor)

Order on Motion to Close Proceedings

THIS CAUSE coming on to be heard on the motion of the court . To close the proceedings, the parties being present or represented by their attorneys, the court having jurisdiction over the subject matter and the parties, and the court being fully advised in the premises and it being in the best interest of the minor;
The Court Finds That:

__1. The family (is/is not) in need of further monitoring by the court

__2.It (is/is not) in the best interest of the minor that this case be closed.

X 3. Adoption is completed 9101

__ 4. Court has lost jurisdiction

Entered 98COA2499
Clerk of the circuit court Jim Quinn
Aurelia Pucinski 8/20/98
Oct 26, 1988
"Appendix B-1"

IT IS THEREFORE ORDERED;

5283 __ A. The motion is denied

4259 __ B. The 405/2-25 Order of Protection is terminated.

4333 __ C. The 405/2-20 Continuance under supervision is terminated.

8001 __ D The petition is dismissed.

8002 __ E. The 405/2-24 Order of Protective Supervision is terminated, and the case is closed.

8007 X F. Wardship is terminated, guardianship is terminated, and the case is closed.

4390 __ G. This matter is continued for further status on _____ at_____ a.m./p.m. before the

4391 _ Judge 4392 __ Hearing Officer

4382 __ H. Legal Custody to stand in _____

Dated: October 20, 1998 Ent."s/ N. Malyiro" 1611

Judge NO

Aurelia Pucinski Clerk of The Circuit Court of Cook County Illinois

State of Illinois
County of Cook

In the Circuit Court of Cook County, Illinois Juvenile Justice & Child Protection Department , Juvenile Justice Division

In Re; Luella Joneson,)
) No. 94 JA 1107
A minor)

Report of Proceedings Had at the hearing of the above-entitled cause, before the Honorable Mary Mulhern, Judge of said court, on the 28th day of October, A. D. 1997.

Present: Hon. Richard A. Devine, State's Attorney of Cook County, by Frank Kosdtouras, Assistant State's Attorney, on behalf of the People;
Ms. Alice Wilson, on behalf of father, Eugene Joneson.
Patrick T. Murphy, Cook County Public Guardian, by Mr. Aaron Weiss, Assistant Public Guardian, on behalf of the minor

Karen F. Moser, C.S.R., R.P.R.
Official Court Reporter
Circuit Court of Cook

"Appendix B-2"

UNFITNESS RULING

Found in Vol 2 of 6, R 210 ln 8 -R 214 ln 24. 0

The Court: Today we're here on the case of Luella Joneson, 94JA1107, for ruling on wether or not Mr. Joneson and Ms. O'Neil are fit parents of Luella.

The state alleges that Frances O'Neil and Eugene Joneson, the mother and father of Luella, are unfit as the parents of Luella Joneson. The state has proven clearly and convincingly that Frances O'neil is unfit in violation of 750 I.L.C.S. sections 50-1D, B,C,M as to efforts and progress and in which are also violations of 705 I.L.C.S., 405/2-29

The State has also proven clearly and convincingly that Eugene Joneson has failed to make reasonable progress towards the return home of Luella since March of '95 when Luella was found to have been neglected in violation of 750 I.L.C.S. 50/1D,M.

There is no shortage of evidence of Mr. Joneson's efforts at complying with the request of his caseworkers. He did parenting skills classes . He did therapy. HE DID Counseling. He'S gone to AA and has done nearly everything tat his case workers have asked of him, and he has faithfully visited Luella almost without fail.

There is no doubt that Mr. Joneson wanted Luella returned to him but in this case his efforts have not produced progress. Let's go back to when Luella was born and see what, if any, progress had been made since that date.

Luella was born at home more than a year after

the State had filed petitions to terminate her parents' rights as to her older sisters. Luella was born at home, not at a hospital, in order to keep DCFS from finding out about her existence and removing Luella from Mr. Joneson and Ms. O"Neil's custody.

Even at Luella's arrival in this world, the parents have her born at home in order to make sure that their interests are protected not Luella's. And at this point, January 30th of 19994 when Luella was born, Mr. Joneson had been in services for at least six years with his two older daughters but that point was still unable to put a child's interest first.

Even at trial here, Mr. Joneson testified that Luella was removed from his custody not due to anything he did, but due to Ms. O'Neill's actions of abandoning her.

Mr. Joneson's inability to anticipate Luella's needs and to put her needs before his make him unable to parent and this inability has been described through out the case as being unable to read Luella's nonverbal cues. This means that Mr. Joneson cannot be relied upon to meet Luella's needs for emotional support, nurturing or sometimes even he physical safety by anticipating or recognizing risks or problems that arise. The visitation history bears this out.

As I said before, he has visited faithfully hardly ever missing visits. But there are examples of this inability to read Luella's cues through out the visitation history Ms. Pesheck, (phonetic) of the parenting assessment team, described Mr. Joneson's response t Luella crying on his lap and that response was, does the

foster mother beat you, as in appropriate. The Catholic Charities workers have described yelling and name calling by Mr. Joneson in front of his daughters at these visits and of the sometimes chaotic atmosphere at some of the visits. All of these examples bear witness to Mr. Joneson's inability to satisfy the emotional and physical needs of his daughters or of his daughter Luella.

I cannot think of another analogy, and I don't mean to trivialize this situation but what has occurred here is very similar to a person taking driver's ;education in order to learn to drive a car. A person can attend driver's ed countless times and do well on the rules of the road and on the simulated driving but to translate those skills into operating a car takes a certain ability and a person's inability to translate what they learned int exercising those skills, for instance, in the driving analogy, will almost certainly lead to disaster.

Every professional who has observed Mr. Joneson with Luella at visits , at evaluations at therapy and this includes Minna (phonetic) Green, the parenting assessment team, and the case workers all have concluded that he is unable to anticipate Luella's needs, to take care of them when they arise, and they conclude that his inability to assure that she will have the emotional and physical safety that she requires.

Mr. Joneson has been found unfit as the parent of Luella's two older sisters, Marilyn and Emily. The findings in the opinion rendered by the First District Appellate court were based on evidence of Mr. Joneson's lack of progress in parenting skills that are strikingly similar to the evidence presented in Luella's

case.

And those findings, together with the lack of progress made since Luella's birth and in spite of numerous services completed by Mr. Joneson since then, lead this Court to the conclusion that there has not been measurable movement by Mr. Joneson toward the goal of return home which is of such quality I would be able to return Luella to his custody in the near future And that concludes my ruling on Luella Joneson.

State of Illinois
County of Cook

In the Circuit Court of Cook County, Illinois Juvenile Justice & Child Protection Department , Juvenile Justice Division

In Re; Luella Joneson,)
) No. 94 JA 1107
A minor)

Report of Proceedings Had at the hearing of the above-entitled cause, before the Honorable Mary Mulhern, Judge of said court, on the 7th day of April, A. D. 1998.

Present: Hon. Richard A. Devine, State's Attorney of Cook County, by Frank Kosdtouras, Assistant State's Attorney, on behalf of the People;
Patrick T. Murphy, Cook County Public Guardian, by Mr. Aaron Weiss, Assistant Public Guardian, on behalf of the minor

Sandra Battaglia
Official Court Reporter
Circuit Court of Cook
C.S.R. #084-003168

Filed
Clerk of the Circuit Court
Aurelia Pucinski
November 17, 1998

"Appendix B-3"

Best Interest Ruling

Found in Volume 1 of 1, November 17th, 1998, R 51 ln 6-R 52 ln 9) of the appellate court 1st distrit

I made the finding in December that both parents were not fit to care for Luella based on failure to make reasonable progress that would led me to believe that it was reasonable within the near future to return Luella to either one of them.

I believe that the evidence today convinces me that it is in Luella's best interest to have a permanent home with the Villanuevas. The testimony is clear that she is bonded to them; that she has lived there most of her life, from almost at birth until she was four years—until now when she is four; and that to remove her would be very detrimental since she views this as being her primary care-giving family; the fact that she is a happy, healthy four year old who is educationally and behaviorally appropriate indicates that her care for four years has been very good and that her needs are met. She is in an adoptive home.

And that at this age, I believe that due to the bond that she has with her foster parents, that termination permitting her to be adopted by the Villanuevas is in her best interest.

And so, Mr. Joneson, I have to enter an order today that terminates you rights as well as Frances O'neil's with regard to Luella.

Illinois Supreme Court
Juleann Hornyak, clerk
Supreme Court Building
Springfield, Illinois 62701
(217) 782-2035

January 29, 2001

Mr. Eugene Joneson
2043 West Dickens
Chicago, Il. 60647

No. 90401- In re Luella J., a Minor (People State of Illinois, respondent, v. Eugene J., petitioner)
Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on February 20, 2001.

"Appendix C"

Supreme Court of Illinois
Supreme Court Building
Springfield 62701

Juleann Hornyak
Clerk of the court
(217) 782-2035

Telecommunications Device
for the deaf
(217) 524-8132

First District Office
20th floor
160 N. LaSalle St
Chicago 60601
(312) 793-1332

Telecommunications Device
For the deaf
(217) 793-1333

March 15, 2001

Mr. Eugene Joneson
11732 South Prairie
Chicago, Il 60628

Today The Following Order Was Entered :

No. 90401- In re Luella J., a Minor (People State of Illinois, respondent, v. Eugene J., petitioner

Motion by petitioner, pro se, for leave to file a motion for reconsideration of the order denying petition for leave to appeal. Motion denied.

Order entered by the Court.

Mandate has issued forthwith to the Appellate Court, First District

cc: Ms. Cheryl D. Cesario
Hon. Richard A. Devine
Ms. Jane Burwell
"Appendix D"

BEST AVAILABLE COPY

IN THE INTEREST	)
OF:	)**Appeal from The Circuit**
LUELLA JONESON	) **Court of Cook County**
No 94JA1107	)
(Minor-Respondent-A	**)ppellee,**
	) **Appellate No. 98-3336**
PEOPLE OF THE	)
STATE OF ILLINOIS	)
Petitioner-Appellee	)
V.	)
	)
EUGENE JONESON	) **Mary Mulhern,**
)Respondent-Apellant	) **Judge Residing.**

Order

The motion of Eugene Joneson for reinstatement of visitation is denied in toto

EUGENE JONESON, Pro Se
2043 W. Dickens
Illinois 60647
telephone 773-645-9695

Chicago,

Justice - P.J. Theis
Justice J. Hartman
Justice J. Quinn

"Appendix E"

Father motions the court for return of visitation for Luella Joneson and to expand current communication with daughter which is currently through letters. This would include telephone calls. DCFS is currently forwarding all letters to the foster family. Father has not been receiving responses that indicated Luella has received anything. Repeated attempts at asking for some return phone calls or a reply letter have been ignored. Luella is not old enough to do either so it is important that her foster parents help her do one or the other. The father, Eugene Joneson and appellant, believes that no contact for Luella Joneson with her birth father is not good for her emotional, moral and mental health. Father has visited her for over four years without missing visits.(Father also delivered Luella at home and was the first person she saw when she was born). As the Illinois Department of Family and Children Services through Catholic Charities is no longer wanting or willing to provide services for his family, the father believes he should be allowed to continue this contact by writing and phoning Luella directly and visiting at a location agreed upon by all with his family therapist present.

Father has motioned trial court, Judge Mulhern presiding, for return of visitation, phone calls or letters without the interference of the Catholic Charities agency and the participation of his own family therapist on August 6th ,1998. It was dismissed as the case was in appellate court and considered under their jurisdiction.

In the instant case the father is appealing the decision of the trial court about visitation where during the best interest hearing of Luella (4/7/98) the trial court Judge Mulhern left visitation up to the discretion of the foster parents through the use of the agency Catholic Charities When the adoption was finalized in may of 1998 all services to Mr. Joneson were discontinued by Catholic Charities including visitation. This meant no visitation would be provided by the agency any more. Even under these conditions , with the court appointed agency no !onger providing services, the petition for reinstatement of visitation (August of 1998) was denied, because the case was considered under appellate jurisdiction. This also shows a bias of the trial court or a serious contradiction of precedence despite previous rulings on this case of two other trial court Judges on jurisdiction and the relationship to visitation while appellate court or higher appeals are pending..

It was argued in the motion on August 6th, 1998 that previous decisions of the trial court indicated the trial court had jurisdiction over visitation while appeals existed in the appellate court. The first circumstance was when the trial court had ruled in father's favor for dismissal of unfitness for older sibling sisters on June 25th,1996 and the dismissal was being appealed in the appellate court. The motion for increased visitation filed August 14th, 1995 was denied by trial court (Judge Szwed ruling), because it was ruled at that time the trial court had: 1. jurisdiction to make decisions about visitation while unfitness was being appealed in the appellate court, and 2. to conform to the decision that

the Juvenile court does not have Jurisdiction to alter the status quo of the court. This was the mandatory court procedure of allowing only one visit per month for visitation during adoption proceedings.

Other rulings and the 2nd circumstance on visitation, held on September 16th, 1997, by Judge Riley (termination of visitation for older sibling sisters) were still considered part of the trial courts jurisdiction even though this case was in appeal to the Illinois Supreme Court. [1]

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[1] Riley also disturbed the status quo of maintaining mandatory once a month visits by terminating visits of the two older sisters due to: 1. the length of time case was in court 2.caseworker testimony for best interests of children because they were experiencing anxiety due to the adoption proceedings. and 3.from a court ordered bonding assessment that said Mr. Joneson was not in contact with his daughter's emotional needs. Appellant believes that all these reasons were a violation of Due Process. And Illinois State Statues. The extreme bias of the new trial court, (by Judge Riley) ruling on visitation of the older sibling sisters) is shown when she stated "I am not doubting this father's love for his children," but " this smacks to me of things you see in stalkers" and " I find the fact that this man is standing before me is like a King Solomon thing" (vol 4 of 5, r105) No evidence of this type of endangerment was ever presented by appellees. This attitude seemed typical of the court in its rulings with Mr. Joneson and his family.

Charities only if the foster parents chose to do so as the court ruled that it was in Luella's Joneson best interest to be adopted by the foster family. But Catholic Charities decided separately to discontinue visits thereafter because the adoption had been completed in the trial court. Through repeated phone calls to all levels of supervisors of Catholic Charities, Mr. Joneson contacted Doris Tribbit of Catholic Charities who said she would forward any letters to all the children.[2] But she made it clear that all visits were terminated because the adoptions had been finalized and Catholic Charities agency's policy did not provide visitation after a adoption order had been entered.

The above rulings by Judge Mulhern has virtually left all visitation in limbo until appealed through the appellate court, a serious abuse to the minor's mental and emotional health. Luella Joneson was never told she would not be seeing her father for a long period of time. The foster parents have not made a good effort or decision in not allowing contact between father and daughter to occur. They have returned no response to all the letters he has written requesting some type of contact with his daughter .

United States Constitutional Law reads " When an unwed father demonstrates a full commitment to the

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[2] (There are also two older sibling sisters in another foster home going through an appellate appeal process on the termination of parental rights.)

responsibilities of parenthood by "com[ing] forward to participate in the rearing of his child, he therefore has a liberty interest, entitled to protection under the Due Process Clause of the Fourteenth Amendment In *Caban v Mohammet, 441 U.S. supra at 392* his interest in personal contact with his children acquires substantial protection under the Due Process *Clause Lehr v Robertson,* 463 U.S. *supra*, at 261

Father's petition for notice to appeal to the appellate court of Illinois was filed on September 4th, 1998. Just assembling the appellate record for evidence to refer to for this petition and the brief is taking additional time due to the complications of filing two briefs approximately at the same time. One brief is for Luella Joneson who is an only child in a separate foster home and another brief is for the two older sibling sisters who are in a different foster home. The docketing number was not obtained until the beginning of October, 1998..

But Luella Joneson should not have to wait any longer to see her birth father, Mr. Joneson. Or he to see her. It is not good for her mental health to be completely cutoff from seeing her birth father while appeals are being filed. It has been over 8 months since the birth father has seen his daughter, nor has he been able to talk with her in any way due to the trial court's custody decision on visitation and jurisdiction and Catholic Charities agency policies. This is creating a situation of neglect by the state of Illinois of Father's family and thus and including daughter Luella.

. This relationship between Mr. Joneson and his

daughter Luella should be maintained. The appellant and father has not missed a visit with his daughter in over 4 years and it is an injustice to his family if visitation is denied again due to Illinois state department policy or foster parents wishes. In *Michael H.v.Gerald D.*491 U.S.110,145 it reads the appropriate level of scrutiny in determining wether statue violates due process is rational basis test when statue under consideration does not affect fundamental constitutional right; courts will subject legislation to strict scrutiny if law impinges upon fundamental right U.S.C.A Const Amend 14
In Harris v. Manor Healthcare Corp. 489 N.E.2d 1374,1375 It also reads we first ask whether the person claiming constitutional protection has an interest that the Constitution recognizes; if we find that he or she does, we next consider the State's interest in limiting the extent of the procedures that will attend the deprivation of that interest .In *e.g. Logan v. Zimmerman Brush Co.* 455 U.S.422,428 Visitation should be maintained until all parental rights are severed by the court by a mandate because all APPEALS ARE EXHAUSTED and guided by the endangerment standard. It should not be determined by the prospective adoptive parents as to what is in the best interest o f Luella. Father, appellant, believes that by allowing the foster parents to deny any future contact with Luella by her birth father, it prevents her from maintaining or continuing a healthy mental relationship with him . This in itself is violating the minimum parenting requirements the state is trying so hard to preserve. It is also detrimental because it allows bonding to occur which is deceitful and hurtful to Luella

Joneson in light of the fact that the appellate court could still reverse the trial court decisions on the unfitness of Mr. Joneson or the best interest of Luella Joneson.

In all the rulings of visitation on L J, there never was any reason given to stop visitation due to a endangerment standard. There has been no court mandated issued indicating unfitness. The trial court was bias in favor of its ruling for the best interest of L. J. and did not consider maintaining the status quo of one visit per month until all appeals are exhausted.

The court also cited *In re Workman* 390 N.E.2d 900 for the proposition that paragraph 1521 of the Illinois Adoption Act must be read as providing that an interim order terminating parental rights severs the parent-child relationship after the expiration of petitioner's right to appeal the order. Appellant understands this to be read that visitation rights should be allowable until all appeals are exhausted.

This petition for return of visitation is not only being presented as truly in the best interests for Luella Joneson but with respect to the endangerment standard. And that there is no endangerment for her at any future visits or at any other times in the past This motion is also justifiable by the United States Constitution Article V: which states nor shall any person be deprived of life, or liberty without the due process of law. Again this adoption has not been mandated as finalized and all appeals have not been exhausted by father appellant.

.. Evidence that was given was by the caseworker ,Christine Foley, at the best interests hearing as to why Mr. Joneson should not maintain custody of

his daughter Luella was that Luella when she was younger would cry when taken from the foster parents when she would go to visits. Caseworker Christine Foley denied this crying had anything to do with separation anxiety which all children go through at the age of 1-3 years old. (This was about the age of Luella when a lot of this crying occurred) But on the other hand she felt that Mr. Joneson was totally out of context when he related Luella's crying at the beginning of visits to some kind of physical punishment that she might be getting at home as a possible reason. Catholic Charities, through their caseworker, Julie Linkon Yalowitz, has had the chance to alleviate any problems Luella has had about visitation such as anxiety about leaving her foster parents and the long drive to visits.

New substantial evidence indicates that the caseworker, Christine Foley, who testified at Luella's unfitness and best interest hearing has perjured herself with regards to her testimony at providing services. This should cast serious doubt or less weight on the caseworker's testimony about Mr. Joneson's daughter Luella. Evaluations to have been completed, as testified by the caseworkers's, were never completed in its entirety. (On the last three pages of the amended appellate brief of older sisters) The caseworker Christine Foley never completed the forms necessary for it. She thus lied or perjured herself in court when she said that this evaluation for the anxiety children had about adoption and their position on it with regards to their father was completed Again this should caste serious doubt on any testimony she has made. Courts must be

cognizant of incentive to perjury in cases which adults who have interest in the outcome of visitation or custody disputes in determining applicability of spontaneous declaration hearsay exception; court must consider not only nature of the action, but also the interests of parties (559 N.E.2d 780) As this question of wether the therapy evaluation was completed was asked twice in court , in two separate hearings, and the answers given as "yes"it indicates an act of willful perjury.

The foster parents have driven with Luella to visits before. As to reasons why they are not cooperating with visits for Luella, it could be because it was left up to their decision and Catholic Charities would not provide the services. Other possibilities could be that 1. they do not want to provide the transportation or 2.since both of them work they do not have enough time for Luella's visitation. Luella Joneson sits in day care many a day while her foster parents work. Certainly one day out of the month could be found out of the month to hold a visit for an hour or two ! Or if at the least , they should be attempting to provide some type of phone contact for her.

The Father, Eugene Joneson , would drive to a closer destination as determined through discussion and mediation with his family therapist and Mr. Joneson and foster family to alleviate any inconveniences .with regards to transportation and visitation. Father is also willing to provide through his therapist, therapy services for Luella with regards to confused relationships or anxiety at visits, because of adoption procedures. Luella was not considered old enough for these services

when Catholic Charities was providing them, but is now reaching that age level of understanding.

. Therapy should also be provided because excess pressure form the discussion of this topic through foster parents and Catholic Charities workers surely has increased this anxiety level for my daughter considerably. This could make visits very uncomfortable for her. Especially when visits have been cut off now for more than six months due to court continuances and changes in jurisdiction which has delayed the return of visitation of Luella with her birth father.

Also, Mr. Joneson was not allowed to mention the subject of return home or adoption to his daughter Luella because of the emotional conflict it could provoke. The father is sure this subject has been explained to her by the foster family.,but how is beyond his knowledge. The father believes it is in the best interest of Luella to understand both sides of the return home process and also believes that it is not a severe endangerment to Luella Joneson's mental ,emotional and moral health. It is also not justifiable for her emotional and mental health to allow therapy where all parties views, opinions, and possibilities are not discussed. Catholic Charities abused their discretion by allowing this to be only a one sided point of view. It certainly could not be considered in the best interest of Luella It must be remembered that the foster parents have not responded to any letters the father has written for Luella or returned any requested telephone calls. That is what a great injustice done to Luella's emotional and mental health is.

Again the only reason given for the discontinuance of the visits by Catholic Charities with Luella and her father were that the case had been finalized as Mr. Joneson's rights had been terminated at the trial level. The court decided that the foster parents who were now considered to be the adoptive parents of Luella and were to decide if she would still be able to see her father. In fact the main argument used for discontinuance of visits was based solely on the judgement of the best interest hearing and that previously father was found to be unfit.

The reasons for being unfit were that the father: 1. was not able to set appropriate limits for his daughter and 2. He was not in tune to her emotional bonding.

Caseworkers had never canceled a visit with Mr. Joneson nor was he considered a danger to them or anyone else. Caseworkers never felt threatened at visits or felt the children were in danger while they were supervising them. But they did not feel comfortable with Mr. Joneson in an unsupervised condition and would fear for the safety of the children if it did occur. Because he could not convince the caseworkers that he had adequate parenting skills that would not put the children in danger because of inappropriate limit setting he was unable to make reasonable progress for return home of his daughter. Possibly because of these reasons no other consideration was given to maintaining contact with Luella while due process occurred in the appellate courts. This even though Luella has never been severely hurt emotionally, mentally, morally or physically at visits for the entire 4 years of visitation. This should be

considered meeting the minimum parenting standards as set by the 89 Illinois Administrative code Chapter 111,Sec.304.2 [3] This discontinuance of visits certainly cannot be considered as such. In Illinois Family Law and Practice, annotation 9:368 it states that any restriction of visitation must be based on the endangerment standard rather than the best interest of the child. Also cited in Woods v Woods 498 NE2d 906. The court is in error where it restricts a parent's visitation rights where the court does not make the requisite finding that the

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[3]

89 Illinois Administrative Code Chapter 111, Sec. 304.2 " Minimum parenting standards" means that a parent or other person responsible of the child's welfare sees the child is adequately fed, clothed appropriately for the weather conditions, provided with adequate shelter, protected from sever physical, mental and emotional harm, and provided with necessary medical care and education required by law. A parent who has abandoned a child, deserted a child for three months, or failed to demonstrate an interest in a newborn child for 30 days after birth is deemed to have failed to have met the minimum parenting standards.. In addition, a parent who is addicted to alcohol as defined in the Alcoholism and Intoxication Treatment Act or who is a drug addict, as defined in the Dangerous Drug Abuse Act, and who has consistently failed to cooperate in a rehabilitative program for a period of at least twelve moths is deemed to have failed to have met the minimum parenting standards unless the child's safety and well-being have been ensured despite the parent's addiction

visitation will seriously endanger the child's physical, mental , moral or emotional health but, rather, the court finds that the restriction in visitation is in the best interests of the children. This indicates that with regards to the type of bonding father has with his children or parenting skills that it should not be the determining factor about visitation unless it is severely endangering the children. The law also reads that the inability to nurture is not the proper statutory bases for the removal of children in re SJ 598 NE2d at 477. The lack of what DCFS seems satisfactorily interaction between parent and child is not justification for termination of parental rights. This includes visitation .

Several reports were made with regards to the bonding Luella had with her birth father, Mr. Joneson, as with regards to services to be offered for the Joneson Family. The first report done was completed by Amy Anson through Michael Reese Hospital. This report indicated that Luella is able to use her biological father when she is distressed, suggesting that he is a familiar adult who she experiences as non-punitive and calming. She does not demonstrate the type of effective attachment to Mr. Joneson that she does with her foster parents, nor is such a relationship expectable, given the one hour per week visitation that is provided. None the less, Luella appears to feel comfortable with her biological father, and explores in his presence. Dyadic therapy is strongly recommended, and until such dyadic treatment has been established, visitation should be continued to be supervised. It also recommends that should Luella ber adopted at some point in the future by

the Villanueva family, that she continue to have regular contact with her biological father. Judge Mulhern was aware of this assessment, but still left visitation up to the discretion of the prospective adoptive parents.

The second was a court ordered parenting assessment done to suggest areas Mt. Joneson could improve his parenting skills in and which included the type of bonding Luella was reported to have with her father. This was exhibited through a parenting assessment team report. The parenting assessment also used many statements that were never recorded in an interview so they could be represented to the court in exact interpretation. This assessment has committed many violations of due process and should be reviewed carefully for many evidentiary errors have been committed. These statements made without supporting evidence were specifically brought out in the post trial motions on August 6th, 1998 to Judge Mulhern. Father, appellant, believes these statements have seriously biased the court. Examples of these statements used in the parenting assessment are: 1. About A story relayed to evaluator about a three year old who tested his patience and got a smack from him 2 (vol.2 of 5,c52) 2. One time at watching a 2 year old he had difficulty at containing his own anger at the child. (Vol 2 of 5,c54) 3. Mr. Joneson states that he is desirous of gaining custody of his three daughters that are more reflective of his emotional needs than theirs(vol 2 of 5,c60). This was the opinion of the evaluator but reports it as if I had said it. 4. The confusion of the evaluator associating father's emotional needs as a parent(and father) being met as the

same as those for meeting adult intimacy needs. (Vol 2 of 5,c62) and 5 Mt. Joneson harbors strong hopes and expectations that his daughter will be there to care for him should they returned to his care (vol 2 of 5 ,c52) 6. It also concluded that there was not a therapeutic intervention that would improve his parenting. These statements are false and adamantly refuted by appellant

Illinois Family Law states that the appellant must show that the incompetent evidence caused some prejudice and that the finder of fact relied upon it In re Best v. Best, 344 S.E.2d 363 (1986) This is certainly valid in the instant case for this information was specifically used in the termination of parental rights and probably influenced the judges and foster parents decision on visitation. (Vol 4 of 5,r55-57)

. If the reports of the agency and the parenting assessment team are considered, these violations of due process should be considered as bias and perjerous proof of the agency's only goal and objective of adoption.

Father also believes that the best interest standard was being put first before the final judgement on unfitness by the agency Catholic Charities to satisfy its own agency goals.. In fact the Guardian Ad Litem's attorney, Pam Coffey, for Luella specifically asked that judgement for visitation be passed strictly on what is the best interest of this child. cited in Woods v Woods 498 NE2d 906. The court is in error where it restricts a parent's visitation rights where the court does not make the requisite finding that the visitation will seriously endanger the child's physical, mental , moral or

emotional health but, rather, the court finds that the restriction in visitation is in the best interests of the children The overbearing atmosphere of recently unsuccessful D.C.F.S cases[4], new budget cuts in the agency, the length of time case was in care and the inexperience of caseworkers and providers of service made the decisions of both the agency and those providers associated with them in favor of no return home for all children in care and thus the loss of visitation. This the father also believes resulted in the cancellation of all visitation before all appeals of termination of parental rights are exhausted.

.. Father has not been allowed to call his daughter Luella at the foster home, to talk to her when the agency was supervising this case and continues till now. The appellant father asks the court if future contact will be allowed with Luella through telephone calls until all appeals have been exhausted. Especially since Luella is still not old enough to read. This will be a real way for her and I to know we have contacted each other and for the father to know she is alright. Father also asks for return of visitation but with an agency other than Catholic Charities..

The father does have a professional family

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[4] Another major factor that affected the decision making process of the judge was the public pressure from two currently unpopular D.C.F.S. cases where children were returned home to their parents and than subsequently killed. This was the Amanda Wallace Case And the Frank Torres case.

therapist he has selected that he prefers to have all visits to help him with his parenting skills and if needed or to witness his contact with his children. His credentials are included in this Motion. {Appellants motion to have therapist was also denied with the return of visitation on the trial court level}. I believe it is in the best interests of Luella to continue to see her father and she is not in danger. I have never abused them physically or mentally at visits. Never once were my visits canceled in 4 years because I was out of control. This indicates I have met the minimum parenting standards and also that my daughter is not in danger when I visit her. I believe that any anxiety she has exhibited at visits was due to normal anxiety experienced for her age group..

Once again ,father pleads for return of visitation through an agency other than Catholic Charities and also to include the involvement of My therapist John Lietzau.. I the father of Luella Joneson believe that as a family, father and daughters (she has two older sisters), we have developed a substantial relationship over this period of time and both the rights and bests interests of our family unit should not be abused any longer through continuing the termination of visits until all appeals are exhausted.. I believe this is a liberty interest entitled to protection under the due Process Clause of the 14th Amendment.

Sixth Division
July 23, 1999

Notice
the text of this order may be changed or corrected prior to the time for filing of a petition for Rehearing or the disposition of the same.

No. 1-98-0774

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re F. O. and E.O, Minors	)	Appeal from the Circuit
	)	Court of Cook County
(The people of the state	)	
of Illinois	)	
Petitioners-appellees,	)	No. 86 J 04662
	)	
Respondent- Appellant	)	

Order

Following a dispositional hearing on December 16, 1997, the circuit court terminated the parental rights of respondent Eugene J. to his two children E. E. and F.O. also known as M.O. Respondent has appealed

"Appendix F"

pro se, contending that the court's "best interests' determination was improper on procedural grounds and against the manifest weight of the evidence.

This matter was before this court on a previous appeal by the Cook County Public Guardian and the State from the dismissal of petitions requesting the appointment of a guardian with the right to consent to the minors' adoption. In re F.O and E.O. No. 1-95-2841 (1997) (unpublished order under supreme Court Rule 23). This court reversed, finding that there was clear and convincing evidence of respondent's lack of reasonable progress toward reunification due mainly to his chronic personality disorder, and remanded the matter to the circuit court. In re F.O. and E.O. No. 1-95-2841, at 11. We also found that there was no basis in the record to support respondent's contentions that he was thwarted in his efforts towards reunification by the caseworkers and others assigned to him. In re F.O. and E.O., No. 1-95-2841, at 11.

Because the facts are described in great detail in the previous appeal, we shall only refer to such facts as necessary to determine the merits of respondent's arguments. Briefly stated, the record shows the E.O. was born on December 3, 1985, and she was adjudicated a ward of the court on March 24, 1987, after a finding of neglect. Her sister, F.O. was born on August 10, 1987, and adjudicated a ward of the court on May 13, 1988, on a similar finding. Each girl had been abandoned by her mother in a public place shortly after birth. They were living together in a foster home. On December 2, 1992, supplemental petitions for the

appointment of a guardian with the right to consent to adoption were filed on behalf of the girls and named respondent as the father. Various witnesses testified as to respondent's lack of progress towards reunification with the girls and his mental disorder which made him unfit to perform parental responsibilities. Witnesses testified on respondent's behalf that he had participated in an AA program and maintained his sobriety for a significant amount of time. Respondent testified that he had a stable household income and that he cooperated with the service plan and services recommended by the social workers assigned to his case. The circuit court found that the state had not met its burden by clear and convincing evidence and dismissed the petition. This court reversed. finding respondent was proven to be unfit, and we remanded the cause for further proceedings. Respondent subsequently filed a petition in the supreme court for leave to appeal which was denied on October 1, 1997.

While respondent's petition was pending in the supreme court, the Public Guardian filed a motion to terminate visits between respondent and the girls. A hearing was held on September 15, 1997. Respondent objected on the grounds that an assessment completed two years earlier had suggested that contact between respondent and the girls continue. The assessment also recommended counseling, but there had been no counseling done as of the date of the hearing.

Christine Foley, who had been the girls' caseworker from Catholic Charities since February 1995, testified that visits were suspended on August

14, 1997, because they were disruptive to the girls and also because the girls indicated that they did not want to visit with respondent anymore. She also testified that F.O. had been in foster care for eight- and one-half years, E.O. had been in foster care for nine- and one-half years. Neither child felt any attachment to respondent. Respondent testified that he was an alcoholic in remission and that he had a mild personality disorder. The court found that the visits were not in the girl's best interests and terminated them.

On December 16, 1997, a best interests hearing on weather to terminate respondent's parental rights was held. Respondent appeared in court with an attorney he had met with the previous weekend. When they arrived at court, respondent gave the attorney all of the information that he had in the case. The attorney requested a continuance, which was denied by the court on the basis that respondent had been informed on numerous prior occasions that there would be no more continuances granted. The attorney did not represent respondent, and the respondent proceeded in the hearing pro se.

Christine Foley testified that E.O. had been in foster care for 11 years, F. O. had been in foster care for 10 years, and both were in the same foster home. Both children were very attached to the foster parents, called them 'mom" and "dad," and both children indicated that they wanted to be adopted by the foster parents. Foley indicated that it would be in the children's best interests to remain with their foster parents because they had provided a stable, loving

home in which the children had lived for many years. Both children stated that they did not want any contact with respondent and that they were uncomfortable with him.

Respondent testified that his parental rights should not be terminated because he had visited the children for 10 to 12 years, they had been communicating and they got along well. He also stated that the evidence indicated that there was nothing wrong with him. He thought that it was in the children's best interest to remain with the foster parents but that his rights should not be terminated.

The court found that the evidence was clear and convincing that it was in the children's best interest to have a guardian appointed with the right to consent to their adoption. The court noted that the children had spent almost their entire lives in that foster home and the effect of removing them from that home and family would be devastating . The court also noted that respondent also considered it to be in the children's best interests to remain with the foster family and terminated respondent's parental rights to E.O. and F.O..

In this pro se appeal, respondent, first contends that the trial court's best interests determination and the termination of his parental rights was improper on procedural grounds. He argues that the trial court improperly terminated visitation while his petition for leave to appeal was pending in the supreme court; that the trial court improperly finalized the adoption during the pendency of the termination of parental rights

appeal to this court; and that the trial court erroneously failed to grant respondent's motion for a continuance on the date of the termination hearing, resulting in substantial prejudice.

We first note that any arguments in respondent's brief and argument relating to the unfitness proceedings were disposed of in the previous appeal to this court. Therefore, such arguments are governed by the doctrine of collateral estoppel, and we decline to review them again. See Kramer v. Dirksen, 296 Ill. App. 3d 819,822 (1998) (collateral estoppel precludes a party from relitigating issues decided in an earlier proceeding).

We also decline to address any arguments relating to the termination of visitation hearing. That hearing was held on September 15, 1997, and respondent did not file an appeal from that determination. Jurisdiction to consider errors arising under a particular judgment of the trial court is conferred on the appellate court by the timely filing of a notice to appeal. 155 Ill. 2d R. 301. If a party fails to appeal from a judgment, this court has no authority to review a claim of error. People v. Morrison, 298 Ill. App. 3d 241, 244 (1988). We will therefore confine our discussion to those arguments which arise from the December 16, 1997, parental rights' termination hearing.

Respondent's first argument is that the trial court improperly finalized the children's adoptions during the pendency of his appeal to the court on the issue of termination of his parental rights Respondent

does not present any evidence to this court that the children were in fact adopted or that he filed for a stay of the adoption pending appeal. Since no court stayed the enforcement of the prior order pending on appeal (In re A.J., 269 Ill. App. 3d 824,830 (1994), we find that the trial court did not err in allowing the appointed guardian to consent to adoption of E.O. and F.O. and then proceeding on those adoptions.

Respondent nest argues that the trial court's failure to grant his motion for continuance at the termination of rights hearing substantially prejudiced him. He claims that only the public defender's office was familiar with the case and that office terminated its representation of him because he could afford a private attorney who was familiar with the case, and when he brought the new attorney to the hearing, counsel should have been granted a continuance.

The decision to grant or deny a motion for continuance lies within the sound discretion of the trial court and such a motion is considered in light of the diligence shown on the part of the movant. People v. West, 137 Ill. 2d 558,589 (1990). Here, respondent's representation by the public defender's office was terminated because he could afford private counsel. Respondent does not give any explanation as to why he waited until the weekend before the scheduled hearing to consult with a new attorney. Nor does he offer any explanation as to why he did not give all of the records that he had in his possession to that attorney until the hearing, Respondent does not dispute that he was told by the court on prior dates that there would be no

further continuances. Therefore, we find that the trial court did not abuse its discretion in denying respondent's motion for a continuance.

Respondent next contends that the order terminating his parental rights was against the manifest weight of the evidence. He makes several arguments in support of that contention. He argues that the court's termination of his parental rights was improperly based on evidence of his mental illness or disability rather than his failure to make reasonable progress toward the return of his children; that the trial court improperly delegated its power to decide the issue of child custody to an independent investigator or mental health professional; that there was no clear and convincing evidence of failure to make reasonable progress but that there was evidence that two caseworkers lied under oath; that he did prove that there was reasonable progress towards return of his children and that the caseworkers interfered with his efforts; that the trial judge was biased in favor of the state and the assessment team; that the two children were never examined on the record as to their wishes concerning living with or visiting respondent; that his free speech rights were repeatedly violated; that his right to freedom of religion was manipulated in favor of the religion of his children's foster parents; that it was never proven that he ever physically or emotionally abused or abandoned the children; that it was not in the children's best interests to be permanently cut off from him through adoption; and that his ties to the children should not be irrevocably cut off when there had been constant

contact of a positive nature for 12 years.

A court may terminate a parent's rights where it finds, based on clear and convincing evidence, that the parent is an "unfit person" In re A.J., 269 Ill. App.. 3d at 827. Once a court finds a parent unfit, then parental rights can be terminated only if the court additionally finds that it is in the best interests of the children for that to occur. In re S.H. 284 Ill, App. 3d 392, 401 (1996). A trial court's finding that termination is in the children's best interests will not be reversed unless it is contrary to the manifest weight of the evidence. In re S. H. , 284 Ill. App. 3d at 401. For a finding to be against the manifest weight of the evidence, the opposite result must be clearly evident from a review of the record. In A.J. 269 Ill. App. 3d at 828. Courts must not allow children to live indefinitely with the lack of permanence inherent in foster homes. In re C.C., 299 Ill. App. 3d at 830.

At the time of the termination of parental rights hearing on December 16, 1997, E.O. was 12 years old and F.O. was 10 years old. Both children had been in their foster homes since they were infants. Although between 10 and 12 years had elapsed, respondent wan not close to being able to provide for his children's needs. While he was financially able to provide for them, he was unable to provide them with the emotional stability and necessary parenting skills. Respondent completed parenting classes, yet was unable to adequately supervise the children even in supervised visits, Neither child had a parent-child relationship with respondent. Both expressed

repeatedly over at least a two year period that they wished to be adopted and that they did not want any contact with respondent. Respondent's arguments have no support in the record. Therefore, we find the court did not err in terminating respondent's parental rights, and its judgment was not against the manifest weight of the evidence.

Accordingly, the judgment of the circuit court is affirmed.

Affirmed.

CAMPBELL, P.J. with ZWICK, J., and QUINN, J., concurring.

(3)

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

NO

IN THE SUPREME COURT OF THE
UNITED STATES
October term 2000

EUGENE JONESON-PETITIONER
VS.
THE PEOPLE OF THE STATE OF
ILLINOIS

IN THE INTEREST OF
LUELLA JONESON

On Petition For Writ of Certiorari to the United States Court For the 1st District of Illinois

PETITION FOR WRIT OF CERTIORARI OF EUGENE HERMAN JONESON APPENDIX G

Eugene Joneson
Pro Se
11732 S. Prairie
Chicago, Illinois 60628
773-568 -4132

Date August 8th, 2001

95 pp

IN THE INTEREST	)
OF:	)**Appeal from The Circuit**
LUELLA JONESON	) **Court of Cook County**
No 94JA1107	)
Minor-Respondent	)
Appellee	)
	) **Appellate No. 98-3336**
PEOPLE OF THE	)
STATE OF ILLINOIS	)
Petitioner-Appellee	)
V.	)
	)
EUGENE JONESON	) **Mary Mulhern,**
Respondent-Appellant	) **Judge Residing.**

Brief for Leave to File Notice to Appeal

EUGENE JONESON, Pro Se
2043 W. Dickens
Illinois 60647
telephone 773-645-9695

Chicago,

"Appendix G"

ISSUES PRESENTED FOR REVIEW

Issues presented for review

1. The trial court's December 2nd unfitness determination terminating parental rights on the failure to make reasonable progress was not clear and convincing and against the manifest weight of the evidence.

There was no clear and convincing evidence that Eugene Joneson was unable to discharge his parental responsibilities due to failure to make reasonable progress in the return of Luella Joneson.

A. The original charges why case came into care because of risk of harm due to mental illness were dismissed and never considered as an issue in the trial. This should be considered reasonable progress in itself.

B/ Evidence indicating that Department of Children and Family Services files only contained information that they wanted to present to the court was ignored and admonished. This included all appeal letters written to the Ombuds office for ACR case reviews.

C. Caseworker reports were inaccurate, included only information that would not benefit Mr. Joneson

V. Caseworkers were not trained in the basics of parenting skills but rather relied upon their natural abilities and their sociology degrees (oriented around the macro of social work instead of the individual) to determine how Luella Joneson's case should be handled.

E. Input at ACR was bias and swayed toward

the testimony and recommendations of the caseworkers only.

f. Caseworkers Services and help provided to father was non-existent unless father was to determine the services needed and than request them.

G. Father did make reasonable progress from the day the case came into care from the day the petition for adoption was passed

Several due process violations occurred which could result in a retrial or a reversal . A. A continuation should have been allowed for Attorney Wilson to further investigate this case. Especially due to the enormous amount of information that had to be sifted through because of relevant information that was available from older sister's from being in care at the same time. B. A parenting assessment was used as the basis for terminating parent rights even though it was represented as a tool to indicate areas for improvement of parenting skills so a parent might get their children back and expressively stated that they do not make decisions about custody. It was fraudulently represented to the defendant. C. Improper evidence and here say statements, (indicated the striking of a two year old and the feeding of adult cornflakes to an infant) was used. Also improper argument (not born with the ability to parent, Luella is not bonded to her father) and erroneous rulings (father failed to accept his role in the abandonment of Luella when she was never abandoned. The older sibling sisters were playing in the lake) and judgements based on law and evidence that were incorrectly used and relied upon in final judgement (post

trial motions indicating perjury on caseworkers part with regards to services offered and non-existent efforts to provide services were entirely ignored)
d. The trial Judge was biased and in favor of the State of Illinois and the assessment team it employed.

It is not on the Best Interests of Luella Joneson to be adopted. It was not clear and convincing that it was in Luella' best interest to be adopted..

Several biases existed that could result in reversal or new trial.

A. the trial court was bias in not allowing a continuance for the Best interest Hearing. Especially since many of the witnesses motioned for were not available for the court upon the hearing date. The trail court essentially decided wether the witnesses were important or not. Other witnesses were denied in am motion for discovery on the same day.

B. The trial court did not consider any familial background such as nationality, race, religion or culture as important to Luella's best interest.

C. Trial court Judge would not permit any questioning with regards to the prospective adoptive parents parenting ability.

D. The trial court abused its discretion during the post trial motion for the best interest hearing by refusing to hear any additional testimony of why it was in the best interest of Luella to vacate the termination order so she could be returned home to her father. Especially since the witness was in court and represented substantial new evidence.

E. The only witness used, Christine Foley, although she had witnessed visits was unfamiliar with the case background. Julie Yalowitz, Luella's caseworker for two years was unavailable for questioning..

F. New substantial evidence indicates Christine Foley's testimony is bias as she has perjured herself in representation of the older sibling sisters.

G. New substantial evidence indicates that the caseworkers were prejudice with regards to adoption. The reasons for no daddy Gene were closely related to the cutting down of visitation with Luella from one week to one month. (The entering of the report was also closely associated with the time period that the defendant had written a letter to the supervisor of the caseworker Julie Yalowitz complaining she was not doing her job with regards to visits.)

E. No one from the parenting assessment team was available for questioning at the best interests hearing because no one had been made available at the hearing. Objections to evidence presented was overruled because the evidence had been presented earlier at the unfitness trial.

IT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE THAT THE FATHER OF LUELLA JONESON DID NOT MAKE REASONABLE PROGRESS FOR HER RETURN HOME

A. Substantial evidence was produced that there was not a mental illness of the defendant and that the appellant was not a danger to his daughter, himself or anyone else. Father completed mental illness therapy and was given the ok. Also attended his AA meetings and

parenting skills classes. Father also provided new substantial evidence from a family therapist that he was able to relate to children.

B. Luella affectionately referred to her farther as Daddy Gene.

C. Father had baptized his daughter Luella at the church of his faith. Programs are available for her healthy 'Christian growth. Father has also provided letters and financial aid if needed for his daughter Luella. Caseworkers consider his gift giving in many situations.

D. Father has constantly maintained contact with his younger daughter although thwarted by the agency's efforts and the foster parents cooperation with CC's suggestions of not to reply through letters.

E. Father has offered a plan for relocation to Luella's neighborhood if need be for a successful return home adjustment.

F. Luella's daily life routine would not be drastically changed. Even with two parents she has been in day care most of her life. Defendant would provide in home sitter services which could be considered an improvement.

G. Father has full support for return of his daughter through his birth and adoptive mother, church involvement, A.A. sponsorship and a single parent group he attends occasionally.

J JURISDICTIONAL STATEMENT

This is an appeal from a final Circuit Court of Cook c County judgments entered on December 2nd, 1997

finding the defendant Eugene Joneson. Unfit and the termination of parental rights on April 7th, 1997. A timely post trial motion for the unfitness hearing was filed on December 31, 1997, continued to January 26th, heard on February; 19th, 1998 with several other amendments. (Vol 1 of 2 C 208) A timely notice of Appeal was filed on February 23rd but dismissed at fathers request so as to appeal both hearings of unfitness and termination together. On April 7th, the best Interests hearing was held and fathers parental rights were terminated. Several motions presented that day from 1.the dismissal of current attorney 2.,a continuance, 3. The duplication of DCFS files for fathers evidence 4. a motion to dismiss the best interest hearing (a continuance. a motion for discovery, 5. A motion for final and additional amendments 6. A motion to have therapist at visits and 7 A motion for letters to be allowed to be written to his girls without being opened by caseworker were denied that day also. (Vol 1 of 2, C 213-220,222) (SR 1 of 2, C 20-188)

On June 22nd, a timely filed post trial motion was continued til August 6th. 1998. Several amendments were added during that time period. These included motions to add missed documentation or supplement (Vol 1 of 2, C 221,225) (SR 1 of 2, C 189-225,226) Also for the return of visitation for daughter and defendant (SR 1 of 2, C 246) All motions were denied.

A timely notice of appeal was filed on September 4th, 1998.

The appellate court granted two extensions of time to file the record of appeal, which was completed on March

5th, 1999. One extension of time for filing brief was motioned

Pursuant to Supreme Court Rule 303 this court has jurisdiction over this appeal of judgement entered by the Circuit Court of Cook County, Illinois, Child Protection Division, in a civil case.

POINTS AND AUTHORITIES

Statement of facts

On January 30th, 19994, Luella Joneson was born to Frances O'Nell and Eugene Joneson. On February 8th, Mr. Joneson went to trial court for a hearing about his older daughters who were in foster care. At this time he told the caseworker from DCFS, Willa Henning that Luella had been born. He than wrote her a note asking for help or services from their department(Sr 1 of 2, 1/8/99 C 137, 140 Post trial motion to vacate) That same day she went to the apartment and inspected for any existing abuse or neglect. None was found.

The next day a follow-up investigator went to the apartment while Mr. Joneson was at work. The mother of the children Frances O'Neill would not let him in stating she did not know who he was. She threatened to kill him if he tried to take the baby. The investigator, Juan Michelle than went and called the police (Vol 1 of 6, R 106). They entered the apartment and took the baby because 1. The mother was not on medication prescribed by an earlier evaluation and 2. She could not find the medical records kept about the baby. And 3

The parents were suspected of being mentally ill.

In the intake report, Mr. Joneson denied any knowledge that the mother was diagnosed as a paranoid schizoid and also believed that she suffered from sever post-partum depression and that if she was taking medication she stopped because she was having a reaction to it and that it was not good for the baby's health (Trial Exhibits 1 of 9, Intake data people's group exhibit A. TE 20, 25, 26 Child abuse/ neglect investigation Review notes). This was also confirmed by a letter written by Mr. Joneson to Willa Henning in court when he asked for DCFS help with the mother of his children (Sr 1 of 2. C 137 - 140)

The defendant also denied knowing about any court order saying he was not to be living with the mother of this children at that time. He was aware that the agency had recommended that he did not live with the mother of his children due to her uncooperativeness with them and this had been mentioned in court, but no court order was ever made with regards to this issue. It was finally agreed upon as a service objective in the ACR plan of 11/7/04 by the appellant father that he would no longer have contact with the mother of the children. This was ten months after Luella was born as the mother of Luella was no longer cooperating in services or visitation with father. (Vol 6 of 9, T E 100.GAl Ex 1 a)

An investigation letter about the 1994 incident reported indicated suspected child abuse or neglect but Mr. Joneson was not named as the person responsible for the child abuse or neglect (Sr 1 of 22, C 141).

When Luella Joneson's case came into care on February 22nd. 1994.the temporary custody order specifically stated that the parents of this minor are mentally ill and unable to care for this minor. (Sr 1 pf 2. C 74 & Vol 1 of 2. C 10-11) On May 23rd of 1995 DCFS and Catholic Charities had met and decided what services were to be offered for Mr., Joneson for the return of his children (TE Vol 4 of 9, Te 140- 147). The defendant, in order to get his children back would have to get: 1.. A neurological psychological evaluation 1 2. A physical neurological evaluation and 3. Attendance on a weekly basis to a referred psychologist or psychiatrist. All of these issues concerned mental illness and Mr. Joneson accomplished all of the above tasks with positive results. Christopher Randolph from Northwestern University indicated there were no neuropsychological abnormalities (Vol 6 of 9, Te 206) The report from Doctor J. Anderson from the University; of Illinois recommended that no further neurological studies be made at this time (Vol 6 of 9, Te 200)

On July 26th , 1995 Tod Harrison the selected LCSW to provide the therapy for Mr. Joneson met with Julie Linkon (married to Yalowitz) and Pam Palmentera along with his attorney's from the public defender's office and discussed the counseling goals for the return of the children (Vol of 8 of 0, Father's Exhibit # 9 TE 110) These included issues of why the case came into care, auditory hallucinations, parenting disabilities, what could be done for the return of the children, feelings about case management issues and to follow all

recommendations of the Community Counseling Center of Chicago. This was confirmed as having been accomplished and was stated in Tod Harrison's letter of 10/27/95 as to details of treatment.

Doctor Childers, a psychiatrist from Chicago Community Counseling Center) reported Mr. Joneson as not to be suffering from any auditory hallucinations.(Vol 8 of 9, trial exhibits 137). This was confirmed in the caseworker report date of plan 10/26/05 (Vol 1 of 9 People's group B 4, pg 3) Eventually the above mentioned therapy by Tod Harrison resulted in including over 60 sessions with therapist Tod Had Harrison. This therapy also met the requirements of psychologists, Katherine Wilson, who in her testimony at trial recommended intensive therapy so Mr. Joneson would meet the parenting requirements for the return of his children possibly within a year (Vo.1 of 6, R 71 ln 23- R 72 ln 7). Mr. Harrison concluded and stated in his letter on March 24th. 1887 to whom it may concern (Father's Exhibit #11 (Vol 8 of 9, Te 113, 126) and on July 15th, 1997 to Steve Plotkin, (Sr 1 of 2, C 91 -93) Mr. Joneson's attorney representing him on Luella's older sibling sister's supreme court appeal, that after 60 sessions he did not see Mr. Joneson as having a severe personality disorder (Sr 1 of 2, C 91)

The above results refuted previous psychologicals by Doctor Joffe (1969 & 1991). Dr. Tepas (1969), Doctor Reebe (1/20/94) and Katherine Wilson (7/7/94) in earlier evaluations. On Doctor Joffe's evaluations of 8/11/89 and 12/06/ 91 (Vol 7 of 9, Te 100-107 & 116-121) he summarized in conclusion for

1989 that 1. Mr. Joneson fails to perceive reality with any degree of accuracy at these times and likely self-medicates with alcohol, the use of which can be under tenuous control at best. Unfortunately, past treatment has focused on Mr. Joneson's alcohol abuse which is not primary but rather symptomatic of far mor serious difficulties. Mr. Joneson must first learn to manage his own affairs with some degree of competence and is not likely to do so without intensive psychiatric intervention. In Joffe's 1991 evaluation he concluded 1. Mr. Joneson stated that he had two past A.A. sponsors but that neither of these had continued, that both sponsors required a greater commitment from him than he was willing to give and that he did not wish to organize his life around AA attendance. He wanted to live a more normal life(Vol 7 of 9, TE 117) It seems unlikely that Mr. Joneson will obtain even restricted deriving privileges with his present level of involvement in AA or other forms of treatment. It remains unlikely that his driving privileges will be restored given his expressed attitudes in this regard and the examiner is hard pressed to believe that Mr. Joneson can appropriately care for his children when he continues to experience such difficulties in negotiating his own affairs. It is also that Mr. Joneson has mismanaged his finances and has raised questions concerning his overall level of financial responsibility. His knowledge of his children remains quite limited and his ability to profit from specific instruction in this regard also remains suspect (Vol 7 of 9, Te 120) 2. There was no apparent evidence of psychotic functioning at this time. (Vol 7 of (, TE 119)

But Mr. Joneson also received his drivers license back in 1994 (Vol 3 of 9.,TE 27)

In Doctor Tepas's evaluation done on 9/14/89 (Vol 7 of 9. Te 107-115) he concluded: 1. Although I don't see Mr. Joneson as being disturbed as he appeared to be at the time of evaluation by Dr. Joffe, I do see him being disturbed to the point of making a formal diagnosis of Schizotypal Personality Disorder. It indicates a general impoverishment of his capacities to function in the adult world and therefore there is equally serious question as to his ability over the long term, to raise his two daughters, 2. Mr. Joneson could benefit from psychiatric care even possibly medication. 3. Mr. Joneson's history of heavy drinking could have led to some organic brain syndrome. (Vol 7 of 9, Te 114) He also concluded that the business world would be very difficult for him to negotiate(Vol 7 of 9, Te 110) The psychiatric evaluation done by Doctor Reebe was done on 1/20/ 94. His conclusions were Eugene Joneson 1. Has been unable to demonstrate stability and adequacy of income. Stability of residence, or adequate progress in parenting skills that would indicate that he will even be able to appropriately and adequately provide for the children's developmental stages that lie ahead. (Vol 7 of 9, TE 122) 2. He was unable to until August of 1993 to obtain a limited driving license that permits him to drive between the hours of 7 a.m. and 7 p.m. in order to work 3. Because of his instability as far as living quarters and income, he was unable to convince DCFS the other agencies such as Catholic Charities, that he was sincere or that he would ever be able to form a stable home and

life for the children.(Vol 7 of 9, TE 129). 4. In this examiner's opinion, Eugene Joneson has a severe personality disorder with a long chronic history of chronic alcoholism of at least 14 or 15 years duration.

The psychological evaluation done by Katherine Wilson on 7/07/ 94 concluded 1. Mr. Joneson did not show any evidence of experiencing auditory or visual hallucinations at that time. (Vol 7 of 9, Te 136) 2. He also appeared to have a certain level of cynical attitudes toward society and its institutions. This would not be unusual given his difficulties maintaining custody of his children. 3. He had considerable morbid content related to childbirth and infanticide. (Vol 7 of 9, Te 137) This had been explained to Doctor Tepas in his earlier evaluation that this was related to abortion protests that had been in the newspapers. (Vol 7 of 9, Te 111) and 4. Mr. Joneson had been able to abstain from alcohol, at least by his reports and others which she had read in her file. He also has managed to regain some driving privileges and to maintain a stable address, all commendable, however they do not necessarily reflect an ability to rear three children (vol 7 of 9, TE 137) Kathy Wilson concluded that with the proper therapy Mr. Joneson would be able to function as a parent and discharge his parental responsibilities with in a year (Vol 1 of 6, R 71, ln 23- R 82 ln 7)

A bonding assessment was done by Amy Anson P.H.D. at Michael Reese hospital and Medical Center on 1/3/95, 2/10/95 &2/27/95 for Luella Joneson with her birth father and her foster parents. She reported that Mr. Joneson' ability to follow through on the nurturing

tasks is in contrast to Luella' clear ability to use him as a soothing figure. Later in the sessions when Luella became upset he cuddled Luella into his arms and she stopped crying quickly (Vol 7 of 9 Te 195) When asked to leave the room for one minute, Mr. Joneson showed extreme discomfort, Luella showed some distress when her father left the room. Throughout the sessions with her biological father Luella showed interest in exploring the environment. She wandered around the room [played with furniture and played with the toys)Vol 7 of 9 , TE 104) Luella used Mr. Joneson as a secure base when her primary caretakers were not available (Vol 7 of 9 TE 1966) Under dispositions and recommendations 2. It reads given Mr. Joneson's continued desire to regain custody of Luella, dyadic therapy is strongly recommended,. The goal of this therapy would be to address Mr. Joneson in the skills outlined above so he could better read and respond to Luella's cues and needs. Helping Mr. Joneson differentiate his own needs and feelings form Luella is critical in such dyadic treatment 3. Until such dyadic treatment has been established, visitation should be supervised (Vol 7 of 9 Te 197). Foster parent bonding to Luella was considered good. 5. If Luella should be adopted at some point in the future by the Villanueva family, it is recommended that she continue to have regular contact with her biological father. This recommendation was not followed by the CC agency (Vol 7 of 9 TE 196) In fact in the caseworker notes of Julie Yalowitz she even recommends that the foster parents don not make phone contact with Mr. Joneson as requested in several letters

that he wrote to them.

A parenting assessment of Mr. Joneson was also done. The parenting assessment team evaluations were as a result of a commission made by Governor Edgar after the death of several children returned home to mentally ill parents know as the Amanda Wallace and Frank Torres cases. On the cover sheet of their report they specifically state that the purpose of their team is to evaluate the parenting capabilities of mentally ill parents. (Vol 1 of 2, 9/25/98 C 78)) It was recommended in court that the father go through this evaluation to assess his parenting abilities by his lawyer. Steve Dore since past evaluations had alluded to mental illness (Vol 3 of 6, R 16) At first this evaluation could not be done because Mr. Joneson did not meet the criteria for being severely mentally ill. This being hospitalized within the last 5 years due to mental illness (Vol 3 of 9, TE 142) But the assessment was allowed by Judge of the trial court to assess his parenting abilities in good faith they would recommend what was needed for the return of the children to Mr. Joneson. These evaluations were done in October and December of 95 and January of 96. When completed the parenting assessment team could not provide any recommendations to improve Mr. Joneson's abilities (Vol 1 of 2, 9/25/ 98 C 80) Because of this assessment reasonable progress in parenting skills was at a virtual standstill because services were not being offered for Mr. Joneson's parenting skills improvement. Mr. Joneson's therapist wrote the Catholic Charities workers and said that this was beyond the normal means of the medical profession to

say nothing could be done and that certainly something could be. He disagreed with the pessimistic tone of the assessment (vol 8 of 9 TE 129) Basically throughout this case Mr. Joneson and his therapist were left to recommending services for the return of custody of the appellant's daughters including Luella, to the Catholic Charities agency who was dissatisfied with his skills because of the recommendation of the parenting assessment team and the agency goal of adoption. Even so most of these requests were generally ignored. Previously, before the completion of the parenting assessment, no new services were offered to Mr. Joneson to improve his parenting skills except intensive psychotherapy by Tod Harrison because the caseworkers were not aware of what services to provide. (Vol 1 of 9, TE 66, Vol 2 of 9 , Gal ex3 TE 184 or TE155) Also because case reviews which would provide services had been canceled up to three years in a row previously (SR 1 of 2, 1/8/99 C 101- 103 Table of contents of Older sibling sister's in record of appeal listing all case reviews held [part of post trial motion]) This was also evidenced in the records of Minna Greene, Mr. Joneson's therapist prior to Tod Harrison(Vol 4 of 9, Te 106) No notification of case reviews, Te 23 7/19/91. Held case review without notification TE 004 9/25/92 Client case review not held, Te 008 4/19/93 DCFS canceled client's case review, TE 34 7/28/95 no case reviews for two years, Te 42 5h case review canceled, TE 81 11/10/92 Catholic Charities has been lax in informing of case reviews) Mr. Joneson and his current therapist Tod Harrison believed

that he had the parenting skills to take care of his children (Vol 8 of 9 , TE 135)The court had ordered an evaluation update on 8/6/96 (Vol 1 of 2, Sept 25th C 126-127) The Illinois Supreme Court Rule 215 was amended effective January 1, 1996 and states in pertinent part , in any action in which the physical or mental condition of a person in legal control is in controversy the court may order the party to submit to a physical or mental examination . On September 26th, 1996 the court ordered ap a physical or mental evaluation as to the appellant's ability to parent and if not if this condition will last beyond a reasonable time period, 9(Vol 1 of 2, September 25th, C 142) This evaluation was to be completed within 30 days, It was never completed until Mr. Joneson did so personally with Doctor Marty Blackman in 1987 (Vol 7 of 9, Te 146-154)

This most recent evaluations done on 6/20/97 and 6/23/97 and submitted as evidence in court was completed by Doctor Marty Blackman though Doctor Child's office, a well know child psycholoIgist in the Chicago area.(Vol 7 of 9, TE 146) Doctor Blackman concluded that Mr. Joneson does not have a personality disorder and he does not meet the diagnostic criteria for Schizotypal Personality Disorder although he may manifest Schizotypal Personality traits. Diagnostically he meets the criteria for alcohol Dependence in Remission (Vol 7 of 9, TE 153,154) He saw no reason why the children should not be returned to their father or his rights be terminated as Mr J did not meet the criteria for a personality disorder, Vol 2 of 6, R 180) This was in

agreement with the current evaluation of Mr. Joneson's therapist Tod Harrison who was still providing intensive therapy recommended for the return of his children., possibly within one year at that time. Mr. Harrison after over 40 hours of therapy did not see Mr. Joneson as having a severe personality disorder and did not see a reason why Mr. Joneson could not be considered as an adequate parent(SR 1 of 2, Jan. 6th, 1996, C 90-93)

New substantial evidence written in a letter by John Lietzau , Mr. Joneson's current family therapist, reads the alleged personality disorder simply does not exist (Sr 1 of 2, Jan. 8th, C 94). Mr. Lietzau had also observed Mr. Joneson interacting with children at Loyola Medical Hospital in the pediatrics department where Mr. Joneson the appellant is a volunteer (Vol 2 of 2, 9/265/96, C 291) besides having 9 therapy sessions with Mr. Joneson (SR 2 of 2, January 8th 1996, C 279-Treatment at Family Interventions) This was in the appellant's motion to have therapist at visits which was denied because the judge did not have jurisdiction because 30 days had elapsed from the termination of parental rights.

In the appellate court mandate issued in May of 1997 for the reversal of the trial court's finding of fitness for older sibling sisters it reads that the respondent's lack of reasonable progress toward reunification with his children was due in large measure to his own chronic personality disorder(Sr 1 of 2 Jan. 8th, C 750 The appellate court was unaware of the results of the current intensive therapy provided by Mr. Joneson's therapist, Tod Harrison at that time and the current psychological

evaluation by Doctor Mary Blackman that stated that a personality disorder does not exist (Also no mention was made of the case reviews canceled for three years which would allowed new services or current services to be reviewed for improvement in parenting skills.) They were every aware that court testimony by Katherine Wilson had stated that Mr. Joneson would possibly be ready to parent within a year if he had intensive therapy relating to his parenting disorder (Vol 1 of 6, R 101) The majority of the caseworker issues centered around Mr. Joneson's ability to set limits, use age appropriate toys, language and the bonding with his children., All of these areas were considered as inadequate for Mr. Joneson as to the return home of his daughter Luella.

ARGUMENT

1 The trial court's December 2nd unfitness determination terminating parental rights on the failure to make reasonable progress was not clear and convincing and against the manifest weight of the evidence

There was no clear and convincing evidence that Eugene Joneson was unable to discharge his parental responsibilities and thus unable to make reasonable progress in the return of Luella Joneson.

A. The original charges why case came into care because of risk of harm due to mental illness were dismissed and never considered as an issue in the trial of Luella Joneson. Mental illness was a major and central theme carried through the older sibling sister's case and brought to bear in the trial of Luella Joneson (SR 1 of 2, Jan. 8th, C 75) But as everyone agreed at pretrial and

during trial that mental illness was no longer an issue (Vol 2 of 6, 138) The elimination of the mental illness issue should be considered reasonable progress in itself for the return home of Luella Joneson and the dismissal of unfitness charges as it was the main reason progress was not made for the return of children as evidenced in the supreme Court Mandate from the older sibling sisters (Sr 1 of 2 Jan. 8th, C 75) and the major reason for the finding of unfitness.

This brings to argument the real reasons for no progress being made as reported by the CC agency. As discussed later, this argument includes such evidence as improperly trained caseworkers, misuse of a parenting assessment, services not being offered or being inadequate and the agency being adoption oriented to the point that any progress made by father that was not for adoption was considered unsatisfactory. In other words Mr. Joneson's efforts for the return home of his daughter were thwarted by case worker actions. (And sometimes by no actions.

Ironically speaking the charges of mental illness were added to the adoption petition of the older sibling sisters almost eight years after their case came into care on November 10, 1993, (Vol 1 of 6, R9)

When Luella Joneson's case came into care on February 22nd 1994, the temporary custody hearing order specifically stated that the parents of this minor are mentally ill and unable to care for this minor. (Sr 1 of 2, C 74 & Vol 1 of 2 C 10-11) In peoples's Group exhibit "a" for Intake Data the summary concludes with the father has completed many services, but there are

psychological and psychiatric evaluations that question his ability to parent. Because the father is not involved in any intensive on going individual therapy, there is nothing to dispute these evaluations. If the father does not follow through with his therapy or the therapist, is also in agreement with the evaluation's findings than the case should be brought to adoption. This was a constant theme throughout these exhibits {Peoples Group exhibit A (Vol 1 of 9, 12/16/94 Te 44 Current situation, 45, Summary, and 34 Service Recommendations) Peoples Group exhibit B1 Trial Exhibits (Vol 1 of 9, TE 51 Client Service Plan 6/13/94 Summarize significant developments, Peoples Group Exhibit B2 (Vol 1 of 9, TE 57) 11/7/94 Reasons why unsatisfactory progress for return home of children (Vol 1 of 9, TE 64)_ Client and Service Tasks, Individual psychotherapy, Peoples Group Exhibit B 3 , Client Service Plan 4/10/95 Tasks attend individual psychiatric therapy, Peoples group Exhibit B4 Client service plan 10/18/95..Why does father currently need services (psychological and psychiatric evaluations that question his ability to parent), People's Group B 6- 15 (Vol 2 of 9, TE 11) 04/09/96 service plan to attend individual psychotherapy People's Group B 7 (Vol 2 of 9, Te 60, 104) Client Service Plan tasks 10/8/96-4/7/97 and 4/7/97-10/31/98 father has shown positive report from therapist in psycho therapy.

In conclusion from the beginning of intake of Luella Joneson and throughout the case as evidenced in the case reviews to the end, the father of Luella Joneson has been trying to refute earlier psychological evaluations

denying his mental stability and thus parenting ability.

On May 23rd of 1995 DCFS and Catholic Charities had met and decided what services were to be offered for Mr. Joneson for the return of his children, he would have to get : 1. A neurological psychological evaluation 2. A physical neurological evaluation and 3. Attend on a weekly basis to a referred psychologist or psychiatrist, .All of these issues concerned mental illness and Mr. Joneson accomplished all of the above tasks with positive results. The reasons underlying a court order from a dispositional hearing should be considered when an agency like DCFS decides what steps must be taken by the parent to achieve the return of the child to the parent's custody 577 NE 2d 1388.

Christopher Randolph from Northwestern University indicated there were no neuropsychological abnormalities(Vol 6 of 9 ,TE 296) This was confirmed by Julie Linkon's letter written on 6/29/95 to Steve Dore, public defender (Vol 3 of 8 TE 142). The report from Doctor J. Anderson from the University of Illinois recommended that no further neurological studies be made at this time(Vol 6 of 9, TE 2000).

On July 27th, 1995 Tod Harrison the selected LCSW to provide the therapy for Mr. Joneson met with Julie Linkon (married to Yalowitz) and Pam Palmentera along with his attorney's from the public defender's office and discussed the counseling goals for the return of the children (Vol 8 of 9, Father's Exhibit # 9 TE 110) These included issues of why the case came into care, auditory hallucinations, parenting disabilities, what could be done for the return of the children, feelings about

case management issues and to follow all recommendations of the Community Counseling Center of Chicago. This was confirmed as having been accomplished and was stated in Tod Harrison's letter of 10/27/95 as to details of treatment.

Doctor Childers, a psychiatrist from 4-Cs (Chicago Community Counseling Center) reported Mr. Joneson as not to be suffering from any auditory hallucinations (Vol 8 of 9, Te 137). This was confirmed in the ACR caseworker report date of plan 10/ 28/ 95 (Vol 1 of 9 People's group B 4, pg 3) Eventually the above mentioned therapy by Tod Harrison resulted in including over 60 sessions with therapist Tod Harrison. This therapy also met the requirements of psychologists, Katherine Wilson, who in her testimony at trial recommended intensive therapy so Mr. Joneson would meet the parenting requirements for the return of his children possibly with a year (Vol 1 of 6, R 71 ln 23- R 72 ln 7). Mr. Harrison concluded and stated in his letter on March 24th, 1997 to whom it may concern (Father's Exhibit#11 (vol 8 of 9, Te 113, 126) and on July 15th 1997 to Steve Plotkin (SR 1 of 2, C 91-93) Mr. Joneson's attorney representing him on Luella's older sibling sister's supreme court appeal. That after 60 sessions he did not see Mr. Joneson as having a severe personality disorder (SR 1 of 2, C 91).

The above results refuted previous psychologicals and indicated a misdiagnosis was done by Doctor Joffee (1989 & 1`991), Dr. Tepas (1989), Doctor Reebe (1/20/94) and Katherine Wilson (7/7/94) in earlier evaluations and or that tremendous progress

had been made through current therapy. On Doctor Joffee's evaluations of 8/11/89 and 12/06/91 (Vol 7 of 9, Te 100- 107 & 116-121) he summarized in conclusion for 1989 that 1. Mr. Joneson fails to perceive reality with any degree of accuracy at these times and likely self-medicates with alcohol, the use of which can be under tenuous control at best. Unfortunately, past treatment has focused on Mr. Joneson's alcohol abuse which is not primary bu rather symptomatic of far more serious difficulties. Mr. Joneson must first learn to manage his own affairs with some degree of competence and is not likely to do so without intensive psychiatric intervention. In Joffe's 1991 evaluation he concluded 1. Mr. Joneson stated that he had two past A.A. sponsors but that neither of these had continued, that both sponsors required a greater commitment from him than he was willing to give and that he did not wish to organize his life around AA attendance. He wanted to live a more normal life (Vol 7 of 9, TE 117). It seems unlikely that Mr. Joneson will obtain even restricted driving privileges with his present level of involvement in AA or other forms of treatment. It remains unlikely that his driving privileges will be restored with his expressed attitudes in this regard and the examiner is hard pressed to believe Mr. Joneson can appropriately care for his children when he continues to experience such difficulties in negotiating his own affairs. It is also that Mr. Joneson has mismanaged his finances and has raised questions concerning his overall level of financial responsibility. His knowledge of his children remains quite limited and his ability to profit from specific instruction in this regard

also remains suspect (Vol 7 of 9, Te 120) (Again no mention was given that Mr. Joneson had still not received or recommended any parenting skills classes from the agency) 2. There was no apparent evidence of psychotic functioning at this time. (Vol 7 of 9, Te 119).

Again substantial information had been provided to indicate these financial responsibility conclusions were incorrect. (Vol 8 of 9, Te 143 k, 146-148, 217-221, Vol 3 of 9, TE 34 -42, 48-56, 221) Mr. Joneson also received his drivers license back in 1995 (Vol 3 of 9, TE 27) If there was any limitation of Mr. Joneson's knowledge of his children it was due in large to what the DCFS agency would provide (Case review plans, medical and school records) and to what the father was allowed to talk about with his children in the limited one hour per month allowed for visitation or in large to DCFS failure to provide any parenting classes up until the year of 1991. And than they only provided one. (SR 1 of 2 1/8/99, C 11) In Doctor Tepas evaluation done on 9/14/89 (Vol 7 of 9, Te 1070115) he concluded: 1. Although I don't see Mr. Joneson as being disturbed as he appeared to be at the time of evaluation by Dr. Joffe, I do see him being disturbed to the point of making a formal diagnosis of Schizotypal Personality Disorder. It indicates a general impoverishment of his capacities to function in the adult world and therefore there is equally serious questions as to his ability to over the long term, raise his two daughters 2. Mr. Joneson could benefit from psychiatric care even possibly medication. 2. Mr. Joneson's history of heavy drinking could have led to

some organic brain syndrome(Vol 7 of 9, TE 114) He also concluded that the business world would be very difficult for him to negotiate (Vol 7 of 9 TE 110) All of these conclusions were covered in the initial psychological and psychiatric evaluations and therapy suggested in the beginning for treatment for the Luella Joneson case, and found to be untrue except for the financial ability The evidence of financial stability indicating Doc Tepas was wrong again in his conclusions was supplied through data provided during the ACRS (vol 3 of 9, TE 49, 54, 56)

This indicated that Mr. Joneson was stable enough to maintain an income through his business that could provide for three daughters. This evidence is no longer an issue in the unfitness trial of Luella Joneson(Vol 5 of 6, R 206 ln 5-11, R 207 ln 2- R 208 ln 5) The psychiatric evaluation done by Doctor Reebe was done on 1/20/ 94. His conclusions were Eugene Joneson 1. Has been unable to demonstrate stability and adequacy of income, stability of residence. Or adequate progress in parenting skills that would indicate that he will even be able to appropriately and adequately provide for the children's developmental stages that lie ahead. (Vol 7 of 9, TE 122) 2 He was unable to until August of 1993 to obtain a limited driving license that permitted him to drive between the hours of 7 . M. and 7 p. m. in order to work 3. Because of his instability as far as living quarters and income, he was unable to convince DCFS the other agencies such as Catholic Charities, that he was sincere or that he would ever be able to form a stable home and life for the children (Vol 7 of 9, TE 129). 4. In this

examiner's opinion, Eugene Joneson has a severe personality disorder with a long chronic history of chronic alcoholism of at least 14 or 15 years duration. Again in contradiction substantial evidence has been presented with regards to Mr. Joneson's financial stability brought up in these reports. (Vol 7 o 9. TE 130) and Abstinence from alcohol (Vol 8 of 9 TE 169, 173-216, 22-241) Doctor Reebe did not recommend any further investigation into the allegations that three years ago Catholic Charities decided that they wanted to put the two children up for adoption by their present foster parents and at that point DCFS stopped notifying him of case reviews and providing services. And although for the past three years he and his lawyer had been trying to attend case reviews, the agencies have thoroughly avoided him and theat he believed that they are trying to go ahead with the adoption in spite of his objections (Vol 7 of 9 TE 127) The psychological evaluation done by Katherine Wilson on 7/07/94 concluded 1. Mr. Joneson did not show any evidence of experiencing auditory or visual hallucinations at that time(Vol 7 of 9, TE 136) 2. He also appeared to have a certain level of cynical attitudes toward society and its institutions. This would not be unusual given his difficulties maintaining custody of his children 3. He had a considerable morbid content related to childbirth and infanticide. (Vol 7 of 9, Te 137) This had been explained to Doctor Tepas in hi earlier evaluation that this was related to abortion protests that had been in the newspapers(Vol 7 of 9, TE 111) and 4.Mr. Joneson had been able to abstain from alcohol, at least by his reports and others which she had

read in her file. He also has managed to regain some driving privileges and to maintain a stable address, all commendable, however they do not necessarily reflect an ability to rear three children (vol 7 of 9, TE 137) Kathy Wilson concluded that with the proper therapy Mr. Joneson would be able to function as a parent and discharge his parental responsibilities with in a year (Vol 1 of 6, R 71, ln 23- R 72 ln 7)

A bonding assessment was done by Amy Anson P.H.D. at Michael Reese hospital and Medical Center on 1/3/95, 2/10/95 &2/27/95 for Luella Joneson with her birth father and her foster parents. She reported that Mr. Joneson' ability to follow through on the nurturing tasks is in contrast to Luella' clear ability to use him as a soothing figure. Later in the sessions when Luella became upset he cuddled Luella into his arms and she stopped crying quickly (Vol 7 of 9 Te 195) When asked to leave the room for one minute, Mr. Joneson showed extreme discomfort, Luella showed some distress when her father left the room. Throughout the sessions with her biological father Luella showed interest in exploring the environment. She wandered around the room [played with furniture and played with the toys)Vol 7 of 9 , TE 104) Luella used Mr. Joneson as a secure base when her primary caretakers were not available (Vol 7 of 9 TE 1966) Under dispositions and recommendations 2. It reads given Mr. Joneson's continued desire to regain custody of Luella, dyadic therapy is strongly recommended,. The goal of this therapy would be to address Mr. Joneson in the skills outlined above so he could better read and respond to Luella's cues and

needs. Helping Mr. Joneson differentiate his own needs and feelings form Luella is critical in such dyadic treatment 3. Until such dyadic treatment has been established, visitation should be supervised (Vol 7 of 9 Te 197).In actuality treatment was never provided or referred to by the agency because they did not think it was necessary at the time due to the current goal of placement at that time which was foster care placement and not return home (Vol 5 of 9, R 132) All requests for Dyadic treatment were ignored, All letters by Tod Harrison to Julie Yalowitz asking if there was anything else that could be done were never replied to and actual request for therapy never acknowledged (Vol 8 of 9, Te 137) Please grant Mr. J. all the support and services to which you feel he is entitled to TE 115 Mr. Harrison requests a further conference to define planning and measurable goals in order to have the children returned to Mr. Joneson 10/27/95, TE 131 & 133 Please write to let me know how I can better serve the interests of Mr. Joneson. 11/27/965 , TE 128 trusting a copy of this letter was delivered to CC about providers for family therapy 2/25/97 This was probably because the return home plan was not an option at this time. (Vol 3 of 9, R 15-16) 5. If Luella would be adopted at some point in the future by the Villanueva family, it is recommended that she continue to have regular contact with her biological father. This recommendation was not followed by the CC agency(vol 7 of 9, TE 196). In fact in the caseworker notes of Julie Yalowitz she even recommends that the foster parents do not make phone contact with Mr. Joneson as requested in several letters

that he wrote to them.

A parenting assessment of Mr. Joneson was also done. The parenting assessment team evaluations were as a result of a commission made by Governor Edgar after the death of several children returned home to mentally ill parents know as the Amanda Wallace and Frank Torres cases. On the cover sheet of their report they specifically state that the purpose of their team is to evaluate the parenting capabilities of mentally ill parents. (Vol 1 of 2, 9/25/98 C 78)) It was recommended in court that the father go through this evaluation to assess his parenting abilities by his lawyer. Steve Dore since past evaluations had alluded to mental illness (Vol 3 of 6, R 16) At first this evaluation could not be done because Mr. Joneson did not meet the criteria for being severely mentally ill. This being hospitalized within the last 5 years due to mental illness (Vol 3 of 9, TE 142) But the assessment was allowed by Judge of the trial court to assess his parenting abilities in good faith they would recommend what was needed for the return of the children to Mr. Joneson. These evaluations were done in October and December of 95 and January of 96. When completed the parenting assessment team could not provide any recommendations to improve Mr. Joneson's abilities (Vol 1 of 2, 9/25/ 98 C 80) This violated the original purpose for having the assessment in the first place which was to provide recommendations for Mr. Joneson to improve his parenting skills. Instead this information done especially on parents of the mentally ill was used as the basis for evidence by the state and the guardian ad litem in the unfitness and best

interests hearing in October 1997 and April of 1998 as to risk of physical harm because of lack of reasonable progress in parenting skills. This was also done even though at pretrial it was agreed that it was no longer an issue of mental disorder but reasonable progress and efforts in parenting skills.(Vol 2 of 6, R 138 ln 10-21) This not only violated the rules of evidence but was an act of discrimination in that the assessments basic criteria for selecting a parent for evaluation was that the parent was suspected of a mental illness that would prevent him from having his children returned (Vol 7 of 0, TE 155) This evidence was to be used for improving parenting skills and not as evidence for reasons for adoption. On the cover pamphlet used for presentation of the explanation of this evaluation it specifically states that the team does not make decisions about custody but collects information to help in answering questions about what the parent can and cannot do, and what may help improve parenting problems (Sr 1 of 2 1/8/99 C 85). It did none of that and was fraudently entered as evidence against the appellant. In 529 NE 2d 972 it read constitutional errors must be shown to be harmless beyond reasonable doubt. The basis for evidence from the parenting assessment report for the state's entire case was a report based on mental illness which the state had created in its earlier evaluations of the appellant by previous psychiatrists and psychologists(Vol 7 of 9 , 166-167 Sources of information) The majority of the evidence used was based on an assessment reports that basically dealt with Mr. Joneson as a mentally ill person and his emotional and mental defects because of it

Nothing was said about what could be done about improving the parenting abilities of the appellant. In fact the conclusion was that they do not see any intervention as being sufficient to address the deficiencies in Mr. Joneson's parenting skills. This is without a doubt a constitutional error that has caused great harm to the appellant with the outcome of the trial court judgement using this evidence to find him unfit to parent and to terminate his parental rights.

Because of this assessment reasonable progress in parenting skills was at a virtual standstill because services were not being offered for Mr. Joneson's parenting skills improvement. Mr. Joneson's therapist wrote the Catholic Charities workers and said that this was beyond the normal means of the medical profession to say nothing could be done and that certainly something could be. He disagreed with the pessimistic tone of the assessment. (Vol 8 of 9, TE 129) Basically throughout this case Mr. Joneson and his therapist were left to recommending services for the return of custody of the appellant's daughters including Luella, to the Catholic Charities agency who was dissatisfied with his skills because of this recommendation of the parenting assessment team and their agency; goal of adoption. Even so most of these requests were generally ignored. Previously, before the completion of the parenting assessment, no new services were offered to Mr. Joneson to improve his parenting skills except intensive psychotherapy by Tod Harrison because the caseworkers were not aware of what services to provide, (Vol 1 of 8, TE 66)(Vol 2 of 9 , Gal EX # 3.

184 or TE 185)services had been canceled up to three years in a row previously (SR 1 of 2, 1/8/99 C 101-103 Table of contents of Older sibling sister's in record of appeal listing all case reviews held [part of post trial motion]) This was also evidenced in the records of Minna Greene, Mr. Joneson's therapist prior to Tod Harrison(Vol 4 of 9, Te 106) No notification of case reviews, Te 23 7/19/91. Held case review without notification TE 004 9/25/92 Client case review not held, Te 008 4/19/93 DCFS canceled client's case review, TE 34 7/28/95 no case reviews for two years, Te 42 5th case review canceled, TE 81 11/10/92 Catholic Charities has been lax in informing of case reviews) Mr. Joneson and his current therapist Tod Harrison believed that he had the parenting skills to take care of his children (Vol 8 of 9 , TE 135)

The court had ordered an evaluation update on 8/6/96 (Vol 1 of 2, sept 25th C 126-127) The Illinois Supreme Court Rule 215 was amended effective January 1, 1996 and states in pertinent part, in any action in which the physical or mental condition of a person in legal control is in controversy the court may order the party to submit to a physical or mental examination . On September 26th, 19997 the court ordered a physical or mental evaluation as to the appellant's ability to parent and if not if this condition will last beyond a reasonable time period (Vol 1 of 2, September 25th, C 142) This evaluation was to be completed within 30 days. It was never completed until Mr. Joneson did so personally with Doctor Marty Blackman in 1997(Vol 7 of 9, TE 146-154).

This most recent evaluations done on 6/29/97 and 6/23/97 and submitted as evidence in court was completed by Doctor Marty Blackman through Doctor Child's office, a well know child psychologist in the Chicago area(Vol 7 of 9, Te 146)Doctor Blackman concluded that Mr. Joneson does not have a personality disorder and he does not meet the diagnostic criteria for Schizotypal Personality Disorder although he may manifest Schizotypal Personality traits. Diagnostically he meets the criteria for alcohol Dependence in Remission (Vol 7 of 9, TE 153,154) He saw no reason why the children should not be returned to their father or his rights be terminated as Mr J did not meet the criteria for a personality disorder, Vol 2 of 6, R 180) This was in agreement with the current evaluation of Mr. Joneson's therapist Tod Harrison who was still providing intensive therapy recommended for the return of his children., possibly within one year at that time. Mr. Harrison after over 40 hours of therapy did not see Mr. Joneson as having a severe personality disorder and did not see a reason why Mr. Joneson could not be considered as an adequate parent(SR 1 of 2, Jan. 6th, 1996, C 90-93)

New substantial evidence written in a letter by John Lietzau , Mr. Joneson's current family therapist, reads the alleged personality disorder simply does not exist (Sr 1 of 2, Jan. 8th, C 94). Mr. Lietzau had also observed Mr. Joneson interacting with children at Loyola Medical Hospital in the pediatrics department where Mr. Joneson the appellant is a volunteer (Vol 2 of 2, 9/265/96, C 291) besides having 9 therapy sessions with Mr. Joneson (SR 2 of 2, January 8th 1996, C 279-

Treatment at Family Interventions) This was in the appellant's motion to have therapist at visits which was denied because the judge did not have jurisdiction because 30 days had elapsed from the termination of parental rights.

In the appellate court mandate issued in May of 1997 for the reversal of the trial court's finding of fitness for older sibling sisters it reads that the respondent's lack of reasonable progress toward reunification with his children was due in large measure to his own chronic personality disorder(Sr 1 of 2 Jan. 8th, C 750 The appellate court was unaware of the results of the current intensive therapy provided by Mr. Joneson's therapist, Tod Harrison at that time and the current psychological evaluation by Doctor Mary Blackman that stated that a personality disorder does not exist (Also no mention was made of the case reviews canceled for three years which would allowed new services or current services to be reviewed for improvement in parenting skills.) They were every aware that court testimony by Katherine Wilson had stated that Mr. Joneson would possibly be ready to parent within a year if he had intensive therapy relating to his parenting disorder (Vol 1 of 6, R 101)

In summary the main reason the case came into care, suspected mental illness, was basically eliminated through 1. Intensive therapy provided by the defendant's therapist as recommended by DCFS through Catholic Charities and the state's psychologist Katherine Wilson(Sr 1 of 2, 1/6/99 C 90. 91-93) 2. The most recent evaluations done by a psychologist Marty Blackman (Vol 7 of 9, Te 149-155) 3. The most recent

psychiatric report by Doctor Childers (Vol 8 of 9, Te 137), 4. The most recent reports from Doctor Chris Randolph from Northwestern University indicating no neuropsychological disorder (Vol 4 of 6, R 172 ln 21-24- 173 ln 1 -11) 5. Doctor Anderson's evaluation report from the University of Illinois indicating no neurological disorder (Vol 7 of 9, TE 145) and 6. New substantial evidence from current family therapist John Lietzau that a personality disorder that does not exist (SR 2 of 2, 1/8/98, C 279) and 7. The admission by the state and guardians' office that this is not an issue of mental disability at pretrial July of 1997(Vol 2 of 6, R 138)

Certain courts have interpreted this statue to hold that "reasonable progress" involves an objective judgement. The benchmark for measuring such progress is the conditions in existence when custody was taken from the parents In re S.J., 233 Ill. App. 3d at 121, 598 N. E.2d at 477 In re Interest of L. N. 278 Ill. App. 2d 50-51,662 N.E, 2d at 154,155 . Or the conditions in existence when custody was taken from the parents In re S. G. 210 Ill. App. 3d, 668, 669-70. 579 N.E, 2d 932, 934 (2nd Dist. 1981) ; In re M.C. 201 Ill. App, 2d 792, 798, 559 N.E. 2d 236, 239 (1st Dist. 1980) As the major issue for removal of Luella Joneson, that of mental illness of the parents, in this case only Mr. Joneson, had been ruled out as the main reason why the Luella Joneson's case came into care, (which was also the basis for the finding of unfitness of the father Mr. Joneson for the older sibling sisters of Luella Joneson in an appellate reversal of a finding of fitness of the appellant by the trial court. The focus of the trial centered on the parenting skills of the defendant Mr. Joneson.

On February 9th, 1994 the intake report of an interview with the intake worker Willa Henning(Vol 1 of 9, TE 19,20 People's Group exhibit A reads The baby was clean and there were diapers, but they were feeding the baby cereal, juice, milk. Thinking this could be dangerous they called the Hotline. In court testimony she testified the baby appeared healthy(Vol 1 of 6, R 106) But the bay was not taken from the home because of risk of harm On the following day the workers returned and took the baby Luella from her mother Frances O'Neill. Several of the reasons given were that: 1. The mother had previously been diagnosed as a schizophrenic 2. She was off her medication 3. The parents had the baby at home so Luella would not be taken away (thus not providing medical care) and 4. She could not provide any doctor's names who provided medical attention.

In the intake report Mr. Joneson denied any knowledge that the mother was diagnosed as a paranoid schizoid and also believed that she suffered from severe post-partum depression and that if she was taking medication she stopped because she was having a reaction to it and that it was not good for the baby's health (Trial Exhibits 1 of 9 , Intake Data at people's group exhibit A, Te 20 25, 28, Child Abuse/ neglect investigation Review notes) This was also confirmed by a letter written by Mr. Joneson to Willa Henning in court when he asked for DCFS help ;with the mother of his children)Sr 1 of 2, C 137-140)

The defendant also denied knowing about any court order saying he was not to be living with the

mother of his children at that time.. He was aware that the agency had recommended that he did not live with the mother of his children due to her uncooperativeness with them and this had been mentioned in court, but no court order was ever made with regard to this issue. In fact no court order has ever been found of that type in the common law record, transcripts or trial exhibits or has ever been presented in court on a motion or as evidence. If this order does exist it has not been presented by either the state or guardian. It seems to the appellant ,Catholic Charities had taken into its power the determination of making its own court order. It has been mentioned repeatedly in case transfers to Catholic Charities Evaluations and the most recent case reviews. This has provided a great deal of confusion in the beginning court and case reviews of Luella Joneson's case. This was also due largely to at that period of time no case reviews had been held up to three years by Catholic Charities and or DCFS with Mr. Joneson's participation because they never notified him. It was finally agreed upon as a service objective in the ACR plan of 11/7/94 by the appellant father that he would no longer have contact with the mother of the children. This was ten months after Luellā was born as the mother of Luella was not longer cooperating in services or visitation with father(Vol 6 of 9, TE 100, Gal Ex 1a) This separation from the mother of his children has existed for Mr. Joneson from that day of agreement 11/7/94 and up until this very day of August of 1999 and should be considered as another major milestone of progress for the appellant father, In 575 NE 2d 262

reasonable progress is more objective depending upon amount of progress measured from conditions existing at time custody was taken from parents. In Interest of Austin 378 NE 2d 543 Reasonableness may also depend on the situation which led to the removal of the children, since slight progress in correcting a situation which was relatively mild could be viewed as more satisfactory as the same degree of progress in correcting a situation that greatly endangered the child.

An investigation letter about the 1994 incident reported indicated suspected child abuse or neglect but Mr. Joneson was not named as the person responsible for the child abuse or neglect(Sr 1 of 2, C 141). This report should be consideration enough for dismissal of charges and was included in the post-trial motion to vacate unfitness and best interest judgement. Filed on May 6th, 1996 (Vol 1 of 2 1/8/99 Circ Stamp, C 141)

The issue of failure to make reasonable progress in parenting skills was brought up in a psychological evaluation with psychologist Katherine Wilson(Vol 7 of 9, TE 134-135 Gal exhibit 2 e) who assume Mr. Joneson had over 5 years of parenting classes. The father was asked why when mother was putting baby cereal into the bay formula that defendant did not do anything. He said he had his baby book and it indicated that this could be added if it was of a liquid consistency (SR 1 of 2, App. Stamp 3/5/99 C 173) Time for solid foods -how soon to feed the baby foods other than milk is a topic of continuing controversy) This part was not included in report but included in the post trial motion to vacate unfitness or best interest judgement(SR 1 of 2,

App. Stamp 3/5/99, C 54) At trial this controversy of feeding cereal in the formula was graduated to an allegation that the parents of Luella were feeding the baby adult cereal.(Vol 5 of 6, R 233, ln 21-23) No testimony by the intake workers for Luella Joneson to support the statement by the state as indicated above can be found in the record of file. Considering the controversy of the experts over this issue of healthy stomach adjustment to solid foods and that Mr. Joneson again could not be considered as unknowledgeable of this parenting technique, the appellant should not be considered as submitting his daughter Luella to risk of harm because the formula was of a liquid consistency.

In (Vol 2 of 9 163 B, Laura Scott reports Mr. Joneson brought a formula for 6-12 month olds to help in promoting to eat solids, but the baby wanted her regular formula, This report indicates progress in parenting skills from which brought this case into care. The appellant is now providing uncontroversial methods of food feeding for Luella(Vol 2 of 9, R 212) In fact the record is full of caseworker or case aid reports made that have mentioned the fact that formula has been brought that is age appropriate, In Vol 2 of 9, TE 144 B formula 4/15/94, 147B, 150B, 157B,160B,161B, 164B, 165B, 166B, stained sweet potatoes and prunes 11/24/94, B167 banana, turkey squash, B168 sweet potatoes & chicken, B169 baby food, B 170 baby food, B172 carrots, veal, strawberry, banana ,B176 milk and cereal 11/30/95 etc. to Te 233) In 575 NE 2d reasonable progress is more objective, depending upon amount of progress measured from conditions existing at

time custody was taken from parent.

As far as having Luella at home so that she would not be taken away it was also discussed with Katherine Wilson, psychologist, evaluator that: 1. Pre-natal notes had been kept (Vol 7 of 9, TE 134 2nd para) 2. The mother was taken to the hospital after delivery (Vol 3 of 9, TE 196-210) and 3. That a certificate of birth had been made by the hospital when baby was brought home(Vol 7 of 9, Te 134 GAl exhibit 2 e) The actual evidence of the notes and certificate were included in the post-trial motion (SR 1 of 2 Jan. 8th, 1998 C 113-131 and 112 these were denied for admissibility) During court testimony at the older sibling sisters trial,. The above Katherine Wilson indicated that since Luella was not born in a hospital she took it to be as symptoms of a mental disorder...I guess you could say hippies might think it more wholesome to be born at home. But people with a religious objection to medical care would not have a mental disorder..(Vol 1 of 6, R 77 ln 11-14, R 78 ln 1-11) This indicates a personal bias by the witness Wilson.

In conclusion the above evidence certainly indicates that reasonable progress has been made from, the conditions that caused the removal of Luella Joneson. The father is no longer seeing the mother and proof has been presented that shows medical attention was given to the baby before and after birth for both mother and child and the baby was in good health when the intake workers arrived for investigation. Also that perhaps an overzealous decision was made with regards to feeding methods. But now father is no longer using

controversial methods of feeding. In 575 NE 2d reasonable progress is more objective, depending upon the amount of progress measured from conditions existing at time custody was taken from parent.

In the reading of her final judgement, Judge Mulhern had ruled that the father Eugene Joneson and mother France O'Neill had their baby at home with little concern for her health.. But only to conceal the birth from the Catholic Charities agency(Vol 2 of 6, R 211) Also that the lack of pre-natal care was shown in that the father could not even tell the day the baby was to be born. This judgment was not vacated even though evidence was submitted indicating this was not true in the submitted post trial motions for unfitness and best interest.(SR 1 of 2 January 8th, C 57 C 112-140) This post trial evidence indicated that Luella was taken to Weiss Memorial Hospital immediately after she was born where both the mother and baby were given after birth care. (Hospital certificate and copies of bills) It was also confirmed by Willa Hennings, intake worker's testimony in court (Vol 1 of 6, R 103) And it was also confirmed in Kathy Wilsons evaluation that the father had taken pre-natal notes for approximately the eight months that her pregnancy was known. (Vol 7 of 9, Te 134) Also in actuality records from Minna Greene, Mr. Joneson's family therapist for more than several years earlier and also the pre-natal notes printed by Mr. Joneson indicate somewhat with accuracy the approximate month of delivery. (Vol 4 of 9, TE 12 and SR 1 of 2, Jan. 8th, C 1125 Pre-natal notes)

Judge Mulhern had also mentioned that Mr.

Joneson testified that Luella was removed from his custody not due to any thing he did but due to Ms. O'Neill actions of abandoning her In contradiction the record is complete with evidence that Luella was not abandoned by her mother but was taken by DCFS investigations on allegations of risk of harm because the parents were mentally Ill (SR 1 of 2, 1/8/99 C 73,74) This should definitely be considered an erroneous ruling on Judge Mulhern's part.

Ad last of all, in her final judgement Judge Mulhern mentions the inability to anticipate Luella's needs or to put her needs before his as not being to read Luella's cues was another reason for termination. In Re SJ 596 NE 2d 477 where a parent has made substantial progress toward correcting the condition that led to the removal of the child, the lack of what DCFS seems satisfactory interaction between parent and child is not justification for the termination of parental rights. Examples of this would be when he said Does the foster parent beat you? As inappropriate.(Vol 2 of 6, R 2120 This thinking that Luella may be abused at home by the foster parents because she came to visits and she was always crying was inappropriate when a more appropriate response would have been she missed her foster parents. Judge Mulhern was not aware of the time when Luella came to a visit with a bump on her head at approximately the same time crying incidents were occurring with her but it was reported to the case aids b y Mr. Joneson (Vol 2 of 9, Te 157, 8/3/94, TE 158 8/9/94) But wether or not she was aware of the above case report the appellant believes that meeting the

concerns for Luella's safety was certainly more important than if the appellant was providing the proper nurturing for her at that time. It was also at least meeting minimum parenting standards in his mind. The DCFS 89 Illinois Administrative Code Ch.111, Sec 304.2 reads that minimum parenting standards means that a parent or other person responsible for the child's welfare sees the child is adequately protected from severe physical, mental and emotional harm. Luella at the time of this incident was not old enough to talk or understand talking State law reads that the inability to nurture or interact is not a proper statutory basis for the removal of children in this state. The children were originally taken away because of the injurious environment and the parents should not have their parental rights terminated for these other nebulous, uncharged reasons. To decide otherwise would allow the state to terminate parental rights for non-statutory reasons which were originally uncharged and which parents have no reason to know are possible bases for the removal of their children Blakey v. Blakey 391 Ne. Ed 222 or (Sr 1 of 2, January 8th, C 97)

Judge Mulhern also indicates that Mr. Joneson cannot be relied upon to meet Luella's needs for emotional support, nurturing or recognizing risks or problems that arise. The visitation history bears this out(Vol 2 of 6 R 212 ln 55 -13) The father ,appellant believes that in reviewing the caseworkers testimony in court and caseworker's reports about visitation discrepancies exist between cross examination of workers, actual facts in evidence, the father or Mr. Joneson's testimony and

ironically case aid reports about visitation which are favorable to Mr. Joneson.

Theses discrepancies indicate that caseworkers were only looking for things that could be wrong with such intensity that it `1. Caused the exaggeration and miscalculation of actual acts that occurred 2. Caused interference of normal visitation to the point that caseworker and client antagonism developed. This bias should be considered along with the inadequacy of the caseworkers parenting skills. The first caseworker who began mentioning inappropriate behavior or parenting skills for Mr. Joneson was Julie Yalowitz. She was also the main witness for the State and guardian, Debra Hinkle and than Laura Scott were the caseworkers for Luella Joneson for the first 11 months of her care by Catholic Charities. No reports of inappropriate behavior occurred during this time. In fact there were many favorable reports made about Mr. Joneson. From Debra Hinkle's and Laura Scott's reports it indicates that Mr. Joneson brought many age appropriate activities and provided proper nurturing and parenting skills. In Vol 2 of 9 Te 156B father kisses and hugs, 157b happy to see Luella, 158B dad spread a blanket on floor for her to roam around on 160B brought an outfit for child, fed and burped Luella 162B father brought a baby walker 164B father brought many clothes also gum cleaner, pacifier baby food and formula and a baby book 165B father talked to Luella telling he missed her and loved her, father was appropriate during visit, 166B cleaned up spilled peas on floor and brought new Mickey Mouse outfit, 167B

took pictures of Luella as she sat on floor, 268B Luella paged through a baby book while father looked over her shoulder and father brushed Luella's hair, 169B father brought a new fisher price highchair , toddler bowl and cup, 179B Luella was given a doll for Christmas and a kiss when the visit ended.

Julie Linkon Yalowitz came on the case approximately one year after the case came into care. Many of her reports contradicted her testimony and showed appropriate parenting skills and nurturing. In(Vol 2 of 9, TE 171B father brought fisher price stroller and ball for Luella and played with both during visit, TE 176 Eugene and Luella drew pictures with crayola markers and built a house out of the mini-cereal boxes, Te 178 Luella needed a fresh diaper so Eugene changed her, played with tape recorder, TE 182 both caseworkers report Mr. Joneson was appropriate with the girls and made an effort to share his affection, TE 184 Father brought blocks and a bunny rabbit for Luella, TE 188 Luella was given a baby cookie , Eugene dipped the cookies in her juice to soften them up, played hide and seek. TE 190 Mr. J. picked Luella up and put her on his shoulders, Te 192 Eugene followed Luella around the to make sure she was safe, TE 196 Eugene greeted Luella with a big hug and got her a cup of water TE 214 Luella was baptized in father's church TE 216 Mr. J. brought Luella a Barbie jeep, In (Vol 7 of 9, R 249 B father talks to Luella saying things like I like you , I love you. In Interest of A.T. 555 NE 2d 409 it reads the first interpretation of unfitness must be based solely on parenting efforts or progress during the period

beginning with adjudication and ending 12 months thereafter. The second interpretation must be based upon parenting efforts or progress made during the entire period between adjudication and filing of the termination petition. Under this latter interpretation, the length of the period is not limited by the statute. The above list of examples certainly indicate reasonable efforts and progress in parenting skills.

The following list is based on these interpretations and is listing the examples of risk of harm or examples of unreasonable progress in parenting skills that Luella was subjected to during visitation argued by the state. In order of importance were: 1. A sharp metal knife that was left on a table in Luella's reach(Vol 3 of 6, R 17) In cross examination Julie Yalowitz who had originally testified to a metal knife was no longer sure if it was metal or plastic. She was later contradicted by another caseworker's testimony of the same knife. The evidence was that on at least one other occasion, that there was a plastic knife(Vol 5 of 6, R 203 ln 24- R 204 ln 1-2) The state eventually withdrew this statement(Vol 5 of 6, R 205 ln 19-20) 2. A plastic bag that Mr. Joneson had put over the head of his daughter to cut a whole out for a bib(Vol 3 of 6, R 19 ln 15-24-R 20 ln 1-29). This Mr. Joneson , the appellant, denied when testifying in court and confirmed that Julie had lied about this testimony also (Vol 5 of 6, R 202 ln 16-24-R 203 ln 1-18). In actuality it was only a conversation held between the appellant and caseworker about making a bib since the appellant had forgotten to bring one to the visit but he could make one out of a plastic bag. 3.

Luella picking up a twisty tie she found on the floor or garbage can('Vol 3 of 6, R 40 In 16-18) (No case report was found of this incident on record) 4 Luella attempting to look into the garbage can after the father threw trash away. This happened many times at visits In (Vol 2 of 9, TE 194 on 4/21/95 Julie writes Luella tried to play in the trash..Mr. Joneson took the items out of her hand but she kept picking out more trash... he finally moved her away from the trash can. AT TE 19 Luella began playing with the garbage can. Eugene told her to refrain from this activity but he did not get up and prevent her from continuing, Luella continued until she found something more interesting to do., TE 200 all at once Luella walked over to the trash can ,Emily went over to make sure she did not get into anything, and at TE 206 Luella continued to wander around the room , She went over to the trash can and pulled something out before Mr. J. said "no" 5. Mr. Joneson brought glitter to use in an art project when Luella was 3 years old. This was a project that Mr. Joneson would be directly supervising. 6. The father was not able to change Luella's diaper (In Vol 3 of 6, R 10, In 11-13) Again to the contrary, the visitation record proves that at practically all the visits Mr. Joneson had changed the diaper of his daughter Luella(Vol 9 of 9, TE 002-021) and (Vol 2 of 9, TE 141-222) There was one situation that occurred where Luella was screaming outrageously and father after considerable convincing by the caseworker was able to change her diaper (Vol 2 of 0, R 208) 7. Mr. Joneson fed Luella too much chocolate at a birthday party. More examples of these inappropriate

parenting skills for termination of parental rights are 1. Mr. Joneson brought the card game of hearts which was not age appropriate. 2. Luella being allowed to wander around the room to explore. This was also about the same time after Luella had just began walking. The caseworker Julie Yalowitz testified that Mr. Joneson did not pay attention to Luella and allowed her to roam around the room on her own. Caseworker and case aid reports are constantly full of evidence of Luella wandering or exploring the room with Mr. Joneson's supervision. In (Vol 2 of 9, TE 188 Eugene took pictures of Luella as she slowly walked around the room Te 190 Luella walked around the room smiling and saying Ma Ma Ma Ma TE 192 Luella began investigating all the toys around the room Eugene followed her around the room to make sure she was safe, TE 194 Luella walked around the room TE 196 Luella began walking around the room to check everything out. Eugene began blowing bubbles which stopped her in her tracks TE 206 Luella continued to wander around the room , She began playing with Mr. J's glasses, he put them on her as she continued to wander around the room, In actuality the above practice of Luella roaming around the room looking for activities to do was common occurrence for her .Every visit room was different and besides the toys the father had brought there were other toys that the agency had provided at the visit. It was also natural curiosity of the appellant's daughter to want to find or discover these new objects through her roaming. The caseworker's testified that Luella roamed around the room and Mr. Joneson was

oblivious as to what she was doing. The appellant wonders just how could a parent who is mentally sane with perception skills from normal, to superior(Vol 7 of 9, TE 151) sitting in a 9 by 12 room not be able to see what his toddler of age 3-4 is doing? Again the article written by Doctor Benjamin Spock indicates that the way to dal with separation anxiety would be to encourage independence and it is important to give the child some freedom around the house(SR 1 of 2, 1/8/99, C 171 Time to explore) This was brought up in the post trial motion to vacate the best interests judgement 3. The sometimes chaotic atmosphere at the visits. Julie Yalowitz testified that Mr. Joneson brought numerous amounts of presents and gifts that overwhelmed Luella at a birthday party . That is a problem when it overwhelms the child because they are not able to concentrate on one gift. It also instills the wrong values in the children that the only reason to see their father was to get presents(Vol 3 of 6, R 17 ln 16 -24 R 18 ln 10=18,21-24, R 19 ln 1) She presented no professional opinion or authorities that would back up her theory, In the Post trial motion to vacate for unfitness and best, interest Mr. Joneson does give his reasons for bringing many activities or gifts to visits which are supported by notable psychologists who have written many professional books and articles. In (Sr 1 of 2, 1/8/99 Circ Stamp C 166-167) their book for Children Under Stress (how to deal with every day stresses of childhood) Under the sub topic of using challenge as a way to deal with stress the book suggests encouraging the children to engage in as many different types of

activities as possible. Arrange a child' environment so novelty and new experiences are commonplace. This is exactly what the appellant was dong by bringing many different activities to a visit solely with the best interest of the children's development and truly aware that this had to be done one hour of the month every month. In Tod Harrison's letter of 10/27/95 he types although I have not seen Mr. Joneson with his children, I neither have seen the disorganization and chaos in him described in the sentences of the bonding assessment synopsis provided to me. I have not experienced him to be incapable of taking or giving nurturing or to have difficulty tolerating distress or unable to set limits(Vol 8 of 9, TE 115) Incidents of being messy and dirty clothes was brought up by caseworkers in their reports. In an other child development book under the topic of permitting it reads some of the behavior of the children, while unpleasant for parents, must be tolerated with good grace and without reproach . Permitting means accepting the harmless childishness of children and not expecting them to be miniature adults. Among the behaviors that you must expect and permit are messy floors while children are playing, dirty clothes after playing. Etc. Tolerating certain of these behaviors with composure in no way implies that you approve of them or expect them to continue over the long run (SR 1 of 6, 11/8/99, C 179) Again during trial , Julie did not state any authorities for her opinion. 4. Mention was also made of inappropriate comments made in front of his daughters to the caseworkers. These included 1. Asking Luella if the foster mother beat her when she was an

infant and not old enough to understand. Mr. Joneson had previously pointed out to case aids a bump on Luella' head. This statement was done in front of Kathy Pesek of the Parenting Assessment team while assessing the appellant's parenting skills. Instead of investigating this further as possible areas of abuse either at home or day care she considered it inappropriate behavior. 2. Telling the girl's the caseworker's don't want us to have any fun because we have to follow all their rules. The caseworkers took this statement as a challenge to their authority. Instead of having leniency depending on the situation. They were dictatorial on all issues. 3. Talking to the baby saying I'm frustrated too that we can't be together all the time, I know you do not want to leave me when a child that age is unable to have the emotions as we describe them as adults of frustration about the situation of wanting to leave or anything like that (Vol 3 of 6, R 120 In reply, babies are not supposed to be able to understand language at an early age I believe the case worker was more upset that the appellant was bonding with the idea that she missed me more than if Luella understood me. This was preventing her and the agencies interest of adoption from occurring.

In conclusion all of the above examples of reason for risk of harm for Luella Joneson and why progress for her return home was not made are really occurrences that happen every day in a normal family and considered nurturing. This goes for occasional arguments between adults, disagreements over what the rules are between parents, kids and outsiders and on how much freedom should be given a child and the limits

onto what is considered dangerous. In Interest of LLS 577 NE 2d 1387 a reviewing court will not substitute its judgement for that of the circuit court unless an abuse of discretion is shown i.e.... no reasonable man could adopt the trial court's position. In all of the above examples, te appellant believes he has proven clear and convincingly that he has met the minimum parenting standards set by the Department of Children and Family Services 89 Illinois administrative Code Ch. 111 Sec. 304.2 Sub chapter A. Minimum parenting standards means that a parent sees that the child is protected form severe physical, mental or emotional harm.

B. Evidence indicating that DCFS who was advocating adoption, had files that were missing documentation and only contained information that they wanted to present to the court was ignored and admonished. This included 1. Appeal letters written to the ombuds office for ACR case review, 2 a medical diagnosis by psychiatrist Doctor Childers. 3 requests for child therapist for children and records of phone evaluations fort therapy for the children 3. Other letters and documents from other branches of investigation of DCFS such as the neuropsychological report of Doctor Christopher Randolph of Northwestern University indicating no abnormalities) and 4. A report that dismissed an accusation of slapping an older sibling sister of Luella (Marilyn Frances) as not founded due to lack of evidence and later denial of daughter. This investigation was reviewed at the office at 1923 S. Indiana) and 5. Letters of communication with the children. 6. Also evidence in DCFS files indicating that

Mr. Joneson was not named as the person responsible for the chid abuse or neglect for Luella (SR 1 of 2, C 14) was ignored in his motion to vacate judgement filed May 7th, 1999) The fact that DCFS files were incomplete with regards to information that would benefit Mr. Joneson was brought up by Attorney Wilson, the defendant's attorney (Vol 5 of 6, 5 ln 13- 20 R 5 ln 12-15, ln 20- 24 R 7 ln 1 - 7) The state's attorney contradicted himself when he said not one time did he say it was the entire file (Vol 5 of 6, R 8 ln 12-18) But the court cautioned Miss Wilson for suggesting anything of that nature (Vol 5 of 6, R 9 ln 19-24) But Judge Mulhern did not do the same when the Public Guardian accused Mr. Joneson of possibly adding evidence to the file.

Some evidence that the state relied upon and that was used by DCFS throughout the case was unfounded, improperly admitted or evidenced by the record. This included 1. The use of a court order that was done so father would not be able to live with mother that did not exist, 2. A parenting assessment report used that was done especially with the criteria of selection being that as categorized as mentally ill. This parenting assessment primary witness and expert Kathy Pesek, had no prior training for evaluating the parenting capabilities of parents(Vol 4 of 6, R 98 ln 20- 24 ,R 99 ln 1-7) or evaluating emotionally disturbed adults.(Vol 4 of 6, R 93) and especially none substantial for evaluating fathers (The Thresh holds for Mothers Project (SR 1 of 2, C 84-88) the first assessment was mandated by Governor Edgar in January of 1995.(vol 6 of 9 ,TE 30

& Vol 4 of 6, R 97 ln 16-19) The appellants assessment was done in October of 1995 (Vol 6 of 9, TE 30,40) No court update assessments have been provided since to indicate that his parenting skills have changed(Vol 4 of 6, R 120)

Through her court testimony; the evaluator Kathy Pesek, indicated that Mr. Joneson did not even meet the minimum of parenting standards to take care of his children. Examples of these situations were 1. he allowed his children to play in the lake during a visit when the worker who was supervising the visit specifically asked that he not do this (Vol 4 of 6, R 53 ln 17-20) This contradicted the actual court testimony of the worker, Hector Rivera, who actually supervised the visit that day. In actuality all that happened was that the girls were starting to undress to go swimming and Mr. Joneson said they would have to stop because the worker did not want them to have fun that way (Vol 1 of 6, R 177 ln 9-24 R 179) 2. In anther incident she had reported he had admitted to the evaluator one incident where he was caring for a young child, a 2-3 year old and that he had struck a child. (Vol 4 of 6, R 581-10) and 3. She continued to report that he felt anger towards Emily, Marilyn and Luella and that he may lose patience dealing with them. No caseworker notes or recordings of the interview that contained this information was ever presented to the court to validate any of the testimonies mentioned above in 2 & 3. Mr. Joneson solidly denied these statements as evidenced in the Catholic Charities appeal letter written on 5/18/96 (SR 1 of 2 App. Stamp 3.5.99, C 155) (Vol 9 of 9, TE 99) in the appellant's

opinion this is leaving these testimonies as purely hear say. When submitting this evidence the state relied upon it for its final argument(Vol 1 of 1 11/17/09988, R 29) This was also brought up in the post trial motion for the best interests hearing(SR 1 of 2, circ. Stamp 1/8/99 C 62) Testimony of an expert witness must be supported by facts of data which have come to his knowledge through his personal perception by examination , factual information supported by evidence. Expert Federal Rules of Evidence Opinion Testimony; Rule 7;09 Factual Basis: Sources of Knowledge. It is grounds for reversal if an expert witness is permitted to express an opinion before he has the supporting facts if they are not supplied in the course of the trial. Gibson vs. Healy 248 NE 2d 771 3. The state also argued that Mr. Joneson had kicked the mother of Luella, Frances O'Neill out in the cold with her older sibling sister Emily who was than a baby. And that when Luella was born the parents were feeding her adult corn flakes. No intake reports of this actually occurring were presented by; the state as of yet . In fact the reports indicate something different. The appellant motioned the court to have these transcripts added to the record as s supplement on June 9th, 1999 but it was denied.

The appellant also believes that the parenting assessment team had a substantially large contract with Catholic Charities which made them bias towards adoption . The state of Illinois had recently reorganized its methods of running the agencies through DCFS during the summer of 1997. Instead of being paid a certain amount for each case that was in care they

reorganized to say that for each case they reduced they could pocket the profit. If the cases went over a certain amount they would have to pay the extra cost(SR 1 of 2, Jan. 8th, 1999 C 71-72) It was in Catholic Charities best Interest as a business to reduce as many cases as possible. As a business if the Thresh holds for Mothers was not successful through the parenting assessment team t o reduce the case loads of Catholic Charities there would be a loss of profit to CC. Therefore is was not in te best interest of the parenting assessment team to provide evaluations that saved families from adoption but rather proved the information to terminate their rights. Just as the records of the PAT report were accepted as the business rule exception, serious consideration must be taken into effect of the bias of these records due to the enormous profit for all that was involved. '

D. Caseworker reports were inaccurate and included only information that would not benefit Mr. Joneson were used as the agency was oriented towards adoption. Caseworkers constantly mentioned in their reports and therapy about a court order that Mr. Joneson the defendant was not to be with the mother of his children In(Vol 1 of 9 trial exhibit people's Group exhibit "A" in the Catholic Charities Traditional and specialized Foster Care Summary under Reason for referral it read. At the time of Luella's birth, Mr. Joneson was court ordered not be living with Frances O'Neill. He came to court stating that a new bay had been born and that Frances O' Neill was living with him. DCFS placed a call the Hotline on 2/8/094 alleging that Luella

was at risk of harm (This even tough they were repeatedly told by defendant that no court order of the type did exist or was ever presented as evidence. No evidence of this order has been found in the files of Luella or of the older sibling sisters) When the case for Luella came into care the trial court Judge Swzed asked why efforts were being made so swiftly for adoption and the caseworkers response was that it was because Luella had two older sibling sisters in the system and that their case was currently in terminations. In the same summary stated just previously under reason for referral it states that on 4/9/86, Emily was abandoned by her biological mother, France O'Neill, at the Catholic Charities office at 721 N. La Salle and had sated that the child's father , Eugene Joneson had kicked her our of the apartment and she had nowhere to go. This was the first time in 9 years where a story of that nature had surfaced. No intake case report has ever been found to indicate that this is true and court transcripts in testimony of that abandonment never indicated the above story as true. (Report of proceeding 11/10/1986 Judge Winiecki) (Vol 1 of 6, R 127) in fact this accusation was first brought up in case reviews and emphasized in therapy objectives for Catholic Charities beginning with the current case workers Julie Yalowitz and Christine Foley. As an example of the caseworker's manipulative nature or bias, a letter whose purpose was to find the mother of Luella Joneson was written as if the father was the one they were searching for. The agency knew all the time of where to locate the appellant or father but were using the reports as if he was unable to be found to

locate the mother. This is how they documented evidence though out this case to the detriment to the father (Vol 3 of 9, TE 103) Since we do not know the where about of the child's father, we are contacting all F. O'Neills in an attempt to locate the correct person.)

D Caseworkers were not trained in the basics of parenting skills but rather relied upon their natural abilities and their sociology degrees (oriented around the macro of social work instead of the individual) to determine how Luella Joneson's case should be handled. This included the evaluator of the parenting assessment team. During court testimony ,when the appellant's caseworker Julie Yalowitz was asked if she had any specified training for dealing with parenting issues with parents or parenting skills of parents and those interactions with children, she answered that she did not receive any specific training geared for that(Vol 3 of 6, R 70 ln 10-14 ,R 71 ln 3-121, R 72 ln 5-10) She testified that how she knew what appropriate parenting skills were at a visit was because of certain things that were instinctual from herself which she felt were appropriate parenting skills(Vol 3 of 6, R 72) Christine Foley also testified that she had no training in parenting skills in the best interest hearing for Emily and Marilyn. Luella Joneson's older sibling sisters(SR 1 of 2, 1/8/99 C 109) The parenting assessment primary witness and expert Kathy Pesek also had no prior training for evaluating the parenting capabilities of parents(Vol 4 of 6, R 96 ln 20-24, R 99 ln 1-7) Mr. Joneson's therapist, Tod Harrison unknowingly remarked about this evaluator's experience when he summarized that we do

not see any intervention as being sufficient to address the deficiencies in Mr. Joneson's parenting abilities(Vol 7 of 9, TE 105) In Tod 's testimony he state's that it is one of the central values of the field of mental health that nobody's is beyond help, and I couldn't understand how someone could be seen to have no hope. (Vol 5 of 6, R 109 ln7-10) In conclusion all of the important witnesses provided by the state and guardian that testified that the appellant had no parenting skills in fact had no specific training for providing services or diagnosing parenting skills beyond their own personal knowledge or instincts for themselves. If considered from this point of view most of their testimony could certainly be considered as hearsay, insubstantial evidence, or to have minimum weight. S.Ct Rule 236 All other circumstances of the making of the writing of record including the lack of personal knowledge by the maker, may be show to affect its weight, but shall not affect it' admissibility. E. Input at ACRS was bias and swayed toward the testimony and recommendations of the caseworker only and almost by verbatim represented the opinions of the evaluators of the parenting assessment team. This occurred and is shown in the trial exhibits record especially after the parenting assessment team had made the decision that nothing could be done to improve Mr. Joneson's parenting skills. In (Vol 4 of 6 , R 37 ln 3-5) Kathy Pesek, the head of the team confirms why when she testifies we are a service for the DCFS caseworkers when they are extremely confused about what to do with a family where mental illness is an issue. This again was done to support their position of

adoption.

F. Caseworkers Services and help provided to father was non- existent unless father was to determine the services needed and than request them. This thwarted the appellant father's efforts in the return of his children. There are countless examples in the record on how the caseworkers attempted to prevent the father from gaining reasonable progress in the return of his children. These are :1. The manipulating of the visiting schedule to fit their own schedules or purposes. There was no specific visiting day per month as there used to be before the caseworker Julie Yalowitz came on the case. Scheduling was done to benefit the caseworkers schedule. 2. New Services were offered to father to improve his parenting skills only after the adoption petition was passed. The letter written to the appellant on 12/ 1/96 was the first time in 10 years after having only one parenting class that Mr. Joneson was ever given a referral to parenting classes. But it was his responsibility to register, Many of these referrals did not have parenting classes or classes that Catholic Charities would accept (Vol 3 of 9, TE 1189) After the review process Mr. Joneson started his-first class with Mary and Tom Leo, which was not included on the list, called introductory to parenting skills. It was completed on may 2nd 1996 (Vol 8 of 9, C 90) The decision for the conditions of Luella's case being referred to legal screening was made on 10/18/95 (Vol 1 of 9 peopled's Group B 4 TE 28) The adoption petition was filed on 4/16/96. All this was done way before Mr. Joneson was given a chance to improve his parenting skills through

parenting classes or therapy with Luella. A letter protesting this was written and received on May 23rd 1996 (Vol 9 of 9, TE 86) 3. Informative information for evaluating reports that was passed on to outside agencies especially the parenting assessment team was incorrect and prevented an effective evaluation. This information included A. The court order not to be with the mother of Luella Joneson supposedly made before Luella was born B. testimony of the older girl's wanting to be adopted done in court when such testimony was never recorded. C. Reports of Numerous Parenting classes that were taken over many years which were confused with volunteer parental stress service 4. Bias ACR and visitation reports were made directly oriented towards an unsatisfactory conclusion and the goal of adoption In this case report of 10/96 it states that Luella's case will be referred to legal screening if recommended by the parenting assessment team and/ or progress of father with service plan is inadequate. (Vol 6 of 9, TE 154,178) A good example of the caseworkers need for unsatisfactory progress for adoption was in the caseworkers' ACR of 11/7/94-5/95 (Vol 5 of 0, TE 126, 127) On page 127 Jule Yalowitz states Mr. Joneson is to develop a plan for taking care of Luella if she is returned home and that he is given an unsatisfactory because he has not developed that care plan. But in contradiction in Julie's caseworker notes there is mention of a return home plan that Mr. Joneson discussed with her(Vol 2 of 9, Te 194) Also on page 126 in direct contradiction of pg 127 she states that progress for the return of Luella Joneson is

unsatisfactory because Mr. Joneson keeps on making return home plans for Luella Joneson in his counseling with his therapist Tod Harrison. In addition emphasis on a counseling goals list for Mr. Joneson with therapist Tod Harrison made on 7/31/95 by Catholic Charities specifically states at 4. To discuss what Mr. Joneson can do to have his children returned to him(Vol 8 of 9, TE 11) In spite of the caseworker Julie Yalowitz also wrote in her evaluation report of 4/95-10/95 that unsatisfactory progress in counseling was made because the focus of therapy for Mr. Joneson and his therapist Harrison was the return home of the children (Vol 6 of 9, TE 229) in (vol 3 of 6, R 6) Julie also testifies that she never referred Mr. J. to therapy sessions where he could go over issues about getting Luella returned to him. Another example of the caseworker manipulating for the goal of unsatisfactory progress would be the giving of an unsatisfactory AA attendance because attendance sheets were not turned on time and the case review was not indicated to be held up until a week before it occurred. Mr. Joneson's therapist wrote and complained about this also in his letter dated 11/6/96 (Vol 3 of 9, TE 15) He also testified that caseworkers did not cooperate with him, Tod Harrison, either by writing or phone calls when written or telephoned for recommendations or suggestions on what could be done to improve Mr. Joneson's parenting ability for the return of Mr. J's children (Vol 5 of 6, R 100 ln 17-21) In fact since July 31st, 1995 neither Julie Linkon or Chris Foley called Mr. Harrison over specific issues Mr. Joneson was having problems parenting with at visits (Vol 5 of 6,

R 127 ln 10-14) 5. Also the caseworkers started adoption proceedings for Luella Joneson barely before one year had passed. This was evidenced by their efforts to reduce visits to once a month in May of 1995 while the appellant was trying to petition for increased visits. The adjudication order was entered on 3/28/95 (Vol 1 of 2, 1/8/99 C 26-27) This reinforces the argument that unfair bias and prejudice existed against the appellant. No attempts were made by case workers to provide adequate services and it severely impacted the bonding between the appellant had his daughter as evidenced by the anxiety of separation when Luella screamed " No Daddy Gene" when her visits had been reduced to once a month for three months in August of 1995 until the workers than returned to every two weeks. State Statues do not allow the parents to file a petition for the return home of their children until after two years have elapsed. This act quickly terminate the appellant's parental rights was done by CC because the older sibling sister's of Luella Joneson were in terminations. It also presented the stage that there was no bonding between the appellant and his daughter 6. Therapy that was recommended by Amy Anson in her evaluation report of Mr. Joneson and his daughter Luella. In her evaluation report it states under dispositions and recommendations that given Mr. Joneson's continued desire to regain custody of Luella, dyadic therapy is strongly recommended. Until such dyadic treatment has been established, visitation should be supervised(Vol 4 of 9, TE 186) Although dyadic therapy was asked for it was denied due to the results of the parenting

assessment team report and the change of the return home plan to foster care placement. A letter which was given to Catholic Charities by Mr. Joneson requesting this therapy was never acknowledged and thus the request was ignored and not acted upon (Vol 8 of 9, TE 128) 6. Caseworkers also did not discuss with Mr. Joneson the reason for terminating volunteer parental stress services which he had been attending for eight years. (Vol 7 of 9, Te 210) Lynne Wilson who also attended the parental services with Mr. Joneson testified she did not see him belligerent or hostile at visits and that she saw Mr. Joneson consistently for 2 and ½ years(Vol 5 of 6, R 135 ln 19- R 136 ln 15) 7. Recommended counseling therapy for the older sibling sisters was canceled before the therapist was through. Catholic Charities had refused to transport the children to the office any longer. They had decided that Minna Greene, Mr. Joneson's therapist from 89-94 had seen enough and should not have to go through with this. Minna Greene did not want to stop (Vol 3 of 6, R 173 ln 13-22) She also believed that Mr. J. did not have adequate judgment and ability to empathize and relate to his children in order to have them returned at that time. This caused considerable bias against the appellant when Minna Greene, Mr. Joneson's advocate, testified in court that she would not recommend returning the children to Mr. Joneson. It was because CC would not allow her to complete her therapy with Mr. Joneson. It must also be remembered that Minna Greene did not see Luella Joneson in any therapy with her father but was used as a major witness because she had seen Mr. J.

with Luella's older sibling sisters. In Minna Greene's report, she mentions that the states attorney, a rep from CCCC, Eugene ' s lawyer and Eugene met and advised him to seek counseling with CCCC so that he could experience a fresh start(Vol 4 of 9, Te 212) But at trial it was argued Mr. J. switched counselors because she would not support his return home plan, thus again putting his interests before the children. 8.Only one parenting class had been offered by Catholic Charities to Mr. Joneson up until the day the adoption screening was passed for Luella Joneson. Catholic Charities had mistakenly or intentionally took the volunteer parental stress services Mr. Joneson had been taking for the last eight years as parenting classes. Hector Rivera had testified in court that Mr. Joneson had taken these classes all the way from 1969 to 1993 though Erie Family Health Center(Vol 1 of 6, R 137 ln 24- R 136 ln1 R 145 ln6-8, R 186 ln14-22, R 206 ln22-24-R 207 ln1, R 210 ln14-16) Mr. Joneson was referred to no one else for parenting classes(Vol 1 of 6, R 228 ln23-24, R 229 ln1-5) There was no one else but Hector Rivera who was to make referrals for parenting skills classes (Vol 1 of 6 R 234, ln25-24- R 235 ln1- 4) The basis for the referral to the parenting skills program was in order to develop or educate Mr. Joneson as to what would be proper behavior for disciplining his children, and proper nutrition and proper limitation setting for the children.(Vol 1 of 6, R 207 ln23-24-R208 ln1-8) Mr. Joneson had also told Hector Rivera that he was not attending parenting classes and it was contained in a report (Vol 1 of 6, R 103 ln 13-16) Even though Mr.

Joneson had testified in court that he had only one parenting class in ten years and the trial court decided in Mr. Joneson's favor for a finding of fitness, Catholic Charities would still offer no parenting classes to Mr. Joneson. Only until after adoption screening had been passed im May of 1995 did CC comply and this only because several complaint letters to the caseworkers, supervisor and administrative review had been written (Vol 3 of 9, Te 118, 119) Steve Dore, Mr. Joneson's lawyer, in his beginning statements at trial stated that the public defenders office would prove in the unfitness trial for Mr. Joneson for Luella's older sibling sisters that Catholic Charities never had appropriate service plan for Mr. Joneson (Vol 1 of 6, R 31) It was brought out at trial that 1. Only one parenting class was offered for Mr. Joneson for the entire period of time from 1985 to 1995 (Vol 3 of 9, Te 176) 2. That Hector Rivera had no idea what was involved in Mr. Joneson's parenting skills training because he never asked for a syllabus of the class and/or that he never contacted the people in charge of these classes 3.he just could not remember because he had lost his case notes and 4. He had never observed any of the parenting skills classes (Vol 1 of 6, R 207 ln 2-18 R 210 ln 6- 13, R 211 ln 14- 21, R 220 ln 17-21, R236 ln20-24,R 237 ln1-20, R 238 ln17-20) In affect he really had no idea of what Mr. Joneson was learning. In Mr. Joneson's post trial motion for Luella Joneson he indicates that in a letter from David Devalle from The Cook County Commissioner's Office it was stated that Mr. Devalle had talked to Eva Hernandez of the Erie Family Health Center. The same Eva Hernandez who

had worked at Erie Family Health Center during the same time Mr. Joneson attended parental stress services there. She indicated that parenting classes had never been taught at Erie Family Health center(SR 1 of 2, C 227) But Hector Rivera had testified again and again that Erie Family Health Center is where Mr. Joneson had taken his parenting classes (vol 1 of 6, R 137 l n 24 - R 138 ln 1, R 145 ln 5-8 , R 186 lb 14-22, R 206 ln 22-24- R 207 ln 1, R 210 ln 14-16) The conclusion drawn from all of this was that Mr. Joneson was not offered parenting classes because his caseworker Hector Rivera assumed that he was taking them all along and never investigated further to confirm that parenting classes were actually being offered,. In fact not until CC had finally come up with a parenting assessment that concluded that no amount of parenting classes would make an improvement in Mr. Joneson's parenting ability did Catholic Charities actually start to provide these services for the appellant As CC was able to provide all the parenting skills class references for attendance that Mr. Joneson could want, consequently the appellant than attended over 100 hours of classes (Vol 3 of 9, Te 30, 44,47,, 123 and SR 1 of 2, 1/8/99 C 176) But regardless the untrained Catholic Charities caseworkers could not see a difference in parenting skills anyway or were over influenced by the parenting assessment. The state relied upon the argument that l Mr. Joneson had been taking parenting classes since the older sibling sister's case came in and still was not able to make progress in parenting skills (Vol 2 of 6, R 236 ln 24 R 237 ln 1-8 R 235 ln 12-15) 9. DCFS had also canceled

case reviews for up to 3 years, from May of 1991 to October of 1984 (Vol 1 of 2, App. /Stamp 3/5/99 C101) For this period of time there was no feed back from Catholic Charities or improvement of services through DCFS. In the meantime Mr. Joneson provided his own parenting skills training through reading of library materials and parents's magazines and volunteer parental stress services. This was also confirmed by the case notes made by Minna Greene(Vol 5 of 9, TE 239 canceled 4/30/92, TE 243 canceled 4/13/93) and (Vol 4 of 9, TE 23 held a case review without notifying, TE 34 no case reviews for 2 years, TE 42 the 5th case review canceled TE 81 CC lax in informing about dates of case reviews over the years. , TE 106 no notification of case review that were held in October 1990 and April of 1991) 10. The workers never made the referral recommended by the Judge Mcgury on September 26th for an update on strictly the ability of Mr. Joneson to parent (Vol 2 of 6, R 122) and thus it cannot be found in the record. They relied upon the results of the parenting assessment team from Thresholds for Mothers for their decisions. The P.A.T. was a service for caseworkers when thy are extremely confused about what to do with a family when mental illness is and issue(Vol 4 of 6, R 37)

G. The trial Judge was bias and unaware of the facts of the case with Mr. Joneson beginning from the withdrawal of the public defender's office to represent him the final reading of the unfitness judgement and the following post-trial motions. She had assumed that Mr. Joneson was unable to get along with all of his attorneys

due to his personality disorder. She did not consider that the public defender's office withdrawal was due to 1. Transfer of public attorney to another calender 2. To department policy of terminating representation of a defendant once a case had been lost on the appellate level and the defendant represented himself on the supreme court level and that differences with his current bar attorney were due to the length of time she was allowing the bar attorney to prepare fore the defense of the defendant's case. During the unfitness trial when this issue that DCFS files were incomplete with regards to information that would benefit Mr. Joneson was brought up by Attorney Wilson, defendants's attorney, the court admonished her for suggesting anything of the nature. But Judge Mulhern did not do the same when the Public Guardian accused Mr. Joneson of possibly adding evidence to the file. During the unfitness reading there were many false conclusions and discrepancies in fact made by Judge Mulhern as if she had made a predetermined judgement and ruled on the facts of the case accordingly. Just currently, the defendant after trying for 9 months and five motions from the appellate court and trial court each, was finally able to get the trial exhibits for Defendant pro Se released by vacating an impounding order given by the trial court Judge Mulhern. The defendant believes that this was not a standard procedure on the trial court Judges part but a deterrent effort to exclude the records for the use of the appellant father (Vol 1 of 1, 2/5/99 C 1-5)

H. Father did make reasonable progress from the day the case came into care from the day that the petition for

adoption was passed. Despite no recommendations or referrals of services by Catholic Charities beyond those mediated through DCFS, the father appellant with the help of his therapist, Tod Harrison, through over 60 sessions of therapy (Vol 8 of 9, TE 113) has had all charges of mental illness dropped against his as well as 1. Managed to attend over 100 hours of parenting classes to improve his parenting skills (Vol 6 of 9, TE 90 -102). 2. Documented attendance of A.A. meetings for up to three years and is going on his 12th year of sobriety (Vol 8 of 9, 140-163, 173-216, 222-241) 3. Missed only a few visits in four years due to weather and colds 4. Attended all court hearings, and Department of Children and Family Service Case Reviews and 5. Attended parental stress services. 6. The appellant was also able to get all three of his daughters baptized. Luella was baptized in the Broadway Methodist Church in January of 1997 (SR 1 of 2, C 236) where the appellant father has been a member for over 5 years and participates in Sunday school services for young children as well as an active church member 7. Father also belongs to a single parent group which provides all kinds of activities for his children should they return home (SR 1 of 2 C 241) 8. The appellant father also has a stable income that will provide for the children, being close to 20,000 per year for the last several years(Vol 3 of 9, 48-58) 9. The appellant father is a volunteer at Loyola Medical University here he keeps company with severely injured or sick young children in need of care in order to cheer their spirits. This has been witnessed and confirmed as satisfactory by not only his current therapist

but by the supervisor of the volunteer office for Loyola (Sr 2 of 2,1/8/99, C 279)

The reasons for unsatisfactory progress for return home of Luella Joneson were 1. For therapy Mr. Joneson was not making progress in therapy because he did not cooperate with the case workers in allowing to have his children adopted. Mr. Joneson's therapist Tod Harrison had written Julie Yalowitz many times and asked for feed back in order for Mr. Joneson to satisfy her on how to obtain the return of the children. Mrs. Yalowitz never returned a phone call or wrote a letter in response. Tod Harrison testified to this in court (Vol 5 of 6, R 127 ln10-14 R 128 ln16-22) and it was brought up in several of his letters. (Vol 8 of 9, Te 68-69, 70-72) 2. For AA attendance he did not have all the records documented for presentation on the day of the case review (The proper number of days of attendance per week) Sometimes barely a week was given before the appellant was notified of a case review. 3 Visits were considered unsatisfactory because Mr. Joneson would not listen to all of the caseworker directives and wanted to have a visit according to how he structured it and brought many age inappropriate gifts. Examples of these gifts included 1.flash cards when Luella was not old enough to read (Vol 3 of 6, R 45 ln 10-15, 2. Bringing a deck of cards to play with Luella when she was only 1 ½ years old(Vol 3 of 6, R 25 ln12-R 26 1-2) he attempted to make a picture with Luella using glitter (Vol 3 of 6, TE 80 ln 14-17) No mention was ever made of the countless toys that Mr. J. had brought from Parents Child Development toys that were age appropriate (Vol

1 of 2, 1/8/99 C 162-165) motion to vacate denied, (Vol 5 of 6, R 168 ln8-12) or that none of the toys he brought had small parts (Vol 3 of 6, 146 ln20-24). But numerous examples were listed in the visiting record which was brought up earlier in this brief 4. Mr. Joneson was also not able to meet Luella's needs because he wan not able to get her involved in activities like coloring or building blocks, rather he allowed her to roam around the room and explore(Vol 3 of 6, R 50 ln 5-15) 4. Mr. Joneson was asked to leave his volunteer parental stress group because he was reading papers and taking notes in class while others were talking and he was in conflict with another group coordinator because of conversation content(Vol 3 of 9, Te 114) Lynne Wilson testified that she had never seen Mr. Joneson belligerent or hostile in the 2&1/2 years she attended parental stress (Vol 5 of 6, R 135 ln 19- R 136 ln3 ,R 139 ln 11- 18) 5. No matter what Mr. Joneson, , the appellant did for the return of his children it would be unsatisfactory for the caseworkers. The caseworkers were intent on getting their unsatisfactory; on all task sheets no matter how contradictory because it was required for adoption. Examples of this are contained in the ACR case Review for 11/7/94- 5/95 On one page it states that the C worker will aid father in developing an appropriate care plan for Luella if requested to do so, and father will develop an appropriate care plan if she is returned home (Vol 6 of 9, TE 97, 101) Father was also to do the same thing in therapy with Tod Harrison in individual therapy as agreed upon in the letter sent by CC on what Mr. Joneson can do to have his children

returned to him (Vol 8 of 9, TE 64 at 4) In the case review evaluation Mr. Joneson was given an unsatisfactory progress with regards to this issue because he was discussing day care arrangements with Tod Harrison (Vol 6 of 9, R 134 bottom of page) This was a no win situation no mater what Mr. Joneson did.

Several due process violations occurred which could result in a retrial or a reversal 1. A continuation should have been allowed for Attorney Wilson to further investigate this case, especially due to the enormous amount of information that had to be sifted through because of relevant information that was available from older sister's from being in care at the same time. 2. A parenting assessment was used as the basis for terminating parental rights even though it was represented as a tool to indicate areas for improvement of parenting skills so a parent might get their children back and expressively stated that they do not make decisions about custody (Vol 1 of 2, C 85) It was fraudulently represented as such but was actually used to provide opinions in court as to why Mr. Joneson should not get his children back. This should be considered as a fraudulent business practice as the records were entered as business records. C. Improper Evidence and here say statements. (Indicated the striking of a two year old, the feeding of adult cornflakes to an infant and a court order that has never been produced as evidence that the father was not to be residing with the mother of Luella Joneson) were used. Also improper argument (not born with the ability to parent, Luella is not bonded to her father) and erroneous rulings (father failed to

accept his role in the abandonment of Luella when she was never abandoned were used. The parents had Luella at home so they could hide her from the agency) and judgements based on law and evidence such as not meeting the minimum parenting standards and no reasonable progress was made were incorrectly used and relied upon in final judgement(post trial motions indicating perjury on caseworkers part with regards to services offered and non-existing efforts to provide services were entirely ignored.) This in actuality indicated Mr. Joneson's efforts were thwarted by the caseworkers.

In conclusion, the father of Luella Joneson humbly pleads with the review court to acknowledge that the manifest weight of the evidence indicates that in fact Mr. Joneson did make reasonable progress in the return of his daughter Luella Joneson. That in fact the evidence produce to indicate his lack of parenting skills contained incidents that were not severely physically, mentally or emotionally harmful to his daughter. These incidents were of the nature that any of the most common man would accept as incidental. Also that the manifest with of the evidence indicated proper parenting skills. That reasonable progress was made for the return home of Luella Joneson because the conditions of why she came into care were remedied. These being 1. The father's mental health, 2 the father living with mother and her mental health and 3. The use of uncontroversial feeding methods. Also that the appellants unsatisfactory progress was due to the efforts of the Catholic Charities agency which was pro-adoption for budget reasons.

This resulted in the use of untrained caseworkers and evaluators who did not spend enough time with Mr. Joneson to get an accurate picture of his real parenting skills or to provide services and who were never trained in parenting skills. Thus in effect his efforts for the children were thwarted by the agency and caseworkers because their basic aim was for adoption because of financial gain. In all the years this case was in care , there was never any sever physical , mental emotional harm to Luella Joneson by the appellant and this should be considered as the father having passed the minimum parenting skills standard set by the state. The father therefore pleads with the court to find him fit to parent his daughter Luella Joneson.

It is not in the Best interests of Luella Joneson to be adopted. It was not clear and convincing that it was in Luella's best Interest to be adopted.

Several biases existed that could result in reversal or new trial.

A the trial court was bias and abused its discretion in not allowing a continuance for the Best interest Hearing. Especially since many of the witnesses motioned for were not available for the court upon the hearing date (SR 1 of 2, Appellate stamp 3/5/99 C 027-29) This included the appellant's pastor, Greg Dell ((SR 1 of 2, App stamp 3/5/99 C30) caseworker Julie Yalowitz, who had been on Luella Joneson's case since January of 1995, Amy Anson, child psychologist, (stated contact with father for Luella should be continued even if Luella was adopted (vol 4 of 9, TE 187) and family therapist, John Lietzau. The trial court essentially decided wether the witnesses were important or not. Other witnesses were denied in a motion for discovery on the same day (SR 1of 2,C27-31) In Supreme Court Rule 183 7 Motion to extend time for filing any pleading or doing any act that is required by rules to be done within a limited period is within sound discretion of the trial court;; however that discretion must be exercised judiciously, and trial court should not refuse a continuance when ends of justice clearly require it.

Motions to allow the appellant access to DCFS files was allowed but not given the time to reproduce . Thus virtually in affect the evidence was not available for trial

(SR 1 of 2, Jan. 8th 1999 C50).
On the day that the best Interest hearing was held Mr. Joneson, the appellant filed a motion to dismiss his attorney and his attorney filed a motion to be dismissed but Miss Wilson and the appellant both had asked for a continuance for the best interest hearing.(Vol 1 of 1, 11/17/98 R58-59) Mr. Joneson needed it because his witnesses could not show and since Alice was not representing him anymore to prepare for the trial. The court had indicated to Mr. Joneson that he had an opportunity to call or subpoena any witnesses for the hearing but Mr. Joneson had not even been appointed to represent himself on that day and his attorney Alice Wilson had done nothing except file a motion for withdrawal as the appellant's attorney. (Vol 1 of 1, 11/17/98, R65) Being ignorant of court procedure Mr. Joneson also thought this was the pretrial date (Vol 1 of 1, 11/17/98 R65). But the best interest hearing was held even though Mr. Joneson did not have all of his witnesses or evidence available., This included family therapist John Lietzau and pastor Greg Dell and CC files of case notes and visitation reports favorable to Mr. J. During the best interest trial it was brought up that Pastor Dell's letter that he could not attend was not included in motion to continue the best interest hearing by Judge Mulhern(Vol 1 of 1, R46 ln 20-23) She continued the trial with evidence of what the appellant thought would be testified to and did not grant a continuance for his testimony (Vol 1 of 1 R44 ln16-R45 ln1-11). Evidence such as the Catholic Charities record for Luella's case was also not available because

it had to be duplicated from Alice Wilson files (Vol 1 of 1, R 69 ln 2-11), Those records were only available from her as of that date. No time was given to obtain them. As a result Mr. Joneson was little prepared for the trial only having been pro SE appointed as of that day. Also Judge Mulhern explained that witnesses could be at the best interest hearing but they had to be called or a subpoena had to be sent. She would not allow enough time for this to be done either. (Vol 1 of 1, R 65 ln 5-21) Evidentiary error, namely the improper exclusion of evidence is an important ground for a new trial when the error was prejudicial. Ballweg v. City of Springfield 114 ILL2d 107 ln 132 NE2d 454 no litigant should be foreclosed of his right to a day in court merely because circumstances beyond his control impel his request for a continuance.

B. Catholic Charities did not consider any familial background such as nationality, race, religion or culture as important to Luella's best interest (Vol 1 of 1, R 04, R5 ln7-14,) This even though the VillaNuevas were of a different culture and the foster father of a different race. There did not seem like any kind of conflict in her mind that the foster parents were Catholic and that the birth father was Methodist.(Vol 1 of 1, R6) In court Christine Foley , Luella's caseworker testified the religious fact as an important factor to the Villa Nuevas (Vol 1 of 1, 11/17/98 R12 ln6-7) But she never talked to them about attending the Methodist church where Luella was baptized (Vol 7 of 9, TE 84 B) and she was uncertain on wether they involved Luella with going to church (Vol 1 of 1, R10 ln22-24_R11 ln1-12) In the

appellants decision the selection of the foster parents was definitely not done with the idea of placing Luella in an environment as close to her birth family culture, religious and ethnic background. The appellant believes by not making that effort the caseworkers have proved again that they were not doing what was in the best interest of Luella Joneson but what was in the best interest of the foster parents and the CC agency with regards to adoption. In Ill. Rev. Stat. 1979, ch. 40 par. 1519 as articulated in the Adoption Act " the court in entering an order of adoption shall, whenever possible, give custody through adoption to a petitioner or petitioners of the same religious belief as that of the child In Illinois Family Law 8-26 certain factors have developed pursuant to case law such as racial consideration, religious consideration, work patterns of parents and time availability for child and the name change of the child. Judge Mulhern also ruled in court that all the emphasis at visits by father indicating to Luella by conversation that Luella is the appellants birth daughter and the foster parents are the ones taking care of her was not relevant in determining her best interest (Vol 1 of 1 , R92 ln11-18) A contradiction of fact was given in the case reviews that were made every 6 months by Catholic Charities. Each and every one of them indicates under the placement checklist that Luella Joneson is placed in a home with the same ethnic, cultural and religious background. This is a self evident misrepresentation of the facts (Vol 7 of 9, TE 4, 47 84) In Family Law Quarterly, Volume XXV, Number 2, Summer 1991 Adoption across religious lines is further

discouraged by imposing an additional procedural requirement; if adoption is granted to a person of a religion different than that of the child, the court must recite for the record the facts that compel the decision also in re Santos 105 N.YS 2d 716 The appellant believes that this could be the reason for the misrepresentation of the facts.

C Trial court Judge would not permit any questioning with regards to the prospective adoptive parents parenting ability (Vol 1 of 1, 11/17/98 cir st. 1998 R16 ln3-8R17 ln1-7) Appellant believes that these could be used as the basis why it is not in the best interest of Luella not to be adopted and should have been allowed. This same type of information was used against the appellant as to why he was to be judged unfit as a parent. Evidentiary error, namely the improper admission or exclusion of evidence, is an important ground for a new trial when the error was prejudicial Ballweg v City of Springfield 499 NE.2d 1373

D The trial court abused its discretion during the post trial motion for the best interest hearing by refusing to hear any additional testimony or evidence of why it was in the best interest of Luella to vacate the termination order so she could be returned home to her father. Especially since the witness, John Lietzau was in court and represented substantial new evidence and the post trial motion contradicted most of the judgement statements made by the judge. (Vol 1 of 1, R122-123 ln1-3) Mr. Lietzau a child therapist would have testified to a misdiagnosis (Vol 1 of 1,R109 ln1-5) and that being a family interventionist he was qualified to testify

to the appellants skills with children that he had observed. (SR 2 of 2 1/8/99 C279)

E. The only witness used, Christine Foley, although she had witnessed visits was unfamiliar with the case background. Julie Yalowitz, Luella's caseworker for two years was unavailable for questioning. Chris Foley never discussed with the Villa Nuevas about attending the Methodist Church or going to church services with Luella and did not know if they involved Luella with going to church or if they provided any educational material with regards to religion for Luella. ((Vol 1 of 1 11/17/98 R10 ln 22-24,R12 ln11), This even though the religious factor is important in the Villanuevas life.

Also Christine Foley knew that Mr. and Mrs Villanueva worked but she could not tell how many hours per week that Luella stayed in the day care center.(Vol 1 of 1,11/17/98, R12 ln12-R13 ln2 This information can be obtained in the Catholic Charity files though, although not currently updated. It indicates that both parents work approximately 28-40 hours per week.(Vol 3 of 9, TE113) Luella's day care was also subsidized by DCFS. (Vol 1 of 1, R13ln3-4) For parents who want a child they do not seem to be available for her or financially stable enough so they could provide the bonding needed. These conditions certainly could explain the heightened anxiety experienced by Luella when she came to visits. It was because her stabilized home environment was not as secure as the agency represented it to be. Her foster parents were rarely available for comforting. Luella

would come to visits and talk to her father about her friends (Vol 1 of 1, 11/17/98 R14 ln13-16) But Chris Foley the caseworker could not associate this with being in contact with Luella's emotional needs or a bonding with his daughter.

F. New substantial evidence indicates Christine Foleys testimony is bias as she has perjured herself in representation of older sibling sisters. Christine foley has represented herself during court testimony as having completed a phone evaluation for the older sisters counseling with regards to adoption. She has also testified that the final results of this conference indicated no further counseling was needed. First this was done at Dupage County mental Health (Vol 2 of 6, R 172 ln16-23) Than she testified this was done at Family Services Southwest (SR 1 of 2, app stamp 3/5/99). Several Letters have been written to her supervisor asking for the records of this evaluation. New substantial information recorded by David Devalle who worked for the cook county commissioners Office (now works for the investigations department of the juvenile court system) while in phone conversation with Lorene Epstein of Family Services Southwest indicates that the evaluations were never completed because Christine Foley never sent the paper work in to complete them. Thus she perjured herself in court with her testimony. During Luella Joneson's Best interest hearing she denied again not having completed this evaluation. Appellant believes that the weight of any testimony she gives should be viewed with the new substantial evidence in mind and that her sole objective

was to get the appellants children adopted to satisfy the agency goals and to maintain her job.

G. No one from the parenting assessment team was available for questioning at the best interests hearing because they had been made available at the unfitness hearing. Objections to evidence produced was overruled because the evidence had been presented earlier at the unfitness trial (Vol 1 of 1, R27 ln10-24). Two of the members were not available for the unfitness trial either..

IT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE THAT THE FATHER OF LUELLA JONESON DID NOT MAKE REASONABLE PROGRESS FOR HER RETURN HOME

A. Substantial evidence was produced that there would not be any risk of harm if Luella was returned home to Mr. Joneson. 1. During the fitness trial and best interest there was no clear and convincing compelling evidence produced indicating that any severe mental, emotional or physical harm would occur if Luella Joneson was returned home to her father. Testimony by Christine Foley was that adoption by the foster parents would be the better solution. But state law also reads that in re Adoption of Burton 356 NE2d 1283 at Hrusosky 351 NE 2d 386 "By someone's standards, it is always possible to find a better home for a child than the one Providence has bestowed " The record is complete with testimony from the

caseworkers that they were not worried about Mr. Joneson being harmful or violent to them or Luella. (Vol 3 of 6, R129 ln10-13, R130 ln20-24.,R131 ln1-6,) Even Luella's attorneys did not feel that there was enough damage or that Luella's safety was at risk at to discontinue visitation (Vol 3 of 6, R139 ln18-24) Father completed mental illness therapy and the therapist, Tod Harrison indicated that he could see no reason why Mr. Joneson could not adequately parent and that he did not see him to be dangerous(Vol 5 of 6 R98) or heard him being dangerous by report The same conclusion was reached by the most current psychiatric done by Doctor Childers of Community Counseling Center and psychological done by Doctor Marty Blackman Father also provided new substantial evidence from his new family therapist, John Lietzau, that he was able to relate to children after several observations of the appellant at Loyola University as a volunteer in the pediatrics department for severely injured or sick children.. (He was denied the chance to observe Luella after the unfitness trial and before the best interest hearing because the caseworkers felt it was too late in the case to introduce someone else.) John Lietzau was also not allowed to testify in the best interests hearing because Judge Mulhern would not allow a continuance for the Best Interest Hearing 2. The father or appellant has not resided with the mother of the children as requested by the Catholic Charities service plan as of 11/7/94. 3. The father has attended over 100 hours of parenting skills classes even though they were only offered after adoption screening had

been passed(Vol 2 of 9, TE37-41). 4. The father also attended his AA meetings and parenting skills classes to prepare himself for the return home of his daughter Luella.

B. Luella affectionately referred to her father as "Daddy Gene" Visitation anxiety for Luella Joneson with screams of " no daddy Gene" were directly related to missed visitation appointments. Julie Yalowitz testified in court that these extreme reactions began in July of 1995 and continued throughout that summer) (vol 3 of 6, R52) Careful research has indicated that visits had been cut back to once a month for Luella during that period of time who had been seeing her father weekly up until this point in time. (Vol 2 of 9, TE191 4/7, TE193 4/21/95, TE195 4/28 TE 197 7/7/95, TE199 8/18/95) Ironically there was also an incident in the case aid notes that tells a story of being lost for 1&1/2 hours on 4/12/95. This certainly could have also raised the anxiety level about Luella going to visits in the future. (Vol 3 of 6, R147).

Mr. Joneson's attorney Preston Jones had motioned the court to return visits back to weekly on 5/16/95 (Vol 1 of 2, 9/25/98 Court Cert. C39-40 On June 21,1995 Judge Szwed ordered and granted in part the return of visits every other week (Vol 1 of 2, 9/25/98 C42). On November 9th, 1995 actual visits were changed to twice a month. Coincidentally visitation anxiety continued throughout the summer because Julie Yalowitz, the caseworker would not and did not comply with the court order of every two weeks. In fact the visit remained at approximately once

a month all summer long until Yalowitz returned them to at least twice a month. In her caseworker report plans it reads Since August 1995, she has been very upset coming to visits, She begins to cry, kick and scream. Due to her reactions, her foster parents now accompany her in the car for visits.(Vol 5 of 9, TE102-103) Mr. Joneson wrote a letter to Julie Yalowitz's supervisor (Pam Palmentera) complaining that it has taken over 2 months for Julie to realize that the court order was for every 2 weeks and not for twice a month. (Vol 3 of 9, TE118) In court Julie denys she had any problem in determining the number of visits (Vol 3 of 6 , R140 ln12-14) Julie's supervisor also responded with a letter giving Mr. Joneson two visits per month in spite of the court order of every two weeks (Vol 3 of 9, Te121) The appellant Mr. Joneson also wrote a letter to Catholic Charities about June of 96 indicating that CC was not following the court order made by Judge Swzed and that unto that date they had missed at least 14 visits due to manipulating the visits to twice a month instead of every two weeks as by court order (Vol 3 of 9, TE25-26,). This was also brought up in the appeal letter written on May 23, 1996 to DCFS (Vol 3 of 9, TE67). Mr. Joneson asked for mediation with C.C. because Catholic Charities had constantly ignored the court order of visitation for Luella for every 2 weeks for the last 9 months (Vol 3 of 9, TE64.) (Also note the incomplete documenting of appellant's appeal letter for the file) The crying of "no Daddy Gene " began in 1996`(Vol 3 of 6,R52 ln13-22,R53ln20-24,R54 ln1-4)Again these anxiety attacks

were directly related to the actual mandatory cutting down of visits because of the terminations petition filed on June 17th and a court order that had been passed allowing visits for only once a month in sept.,((Vol 2 of 6, R128 ln22-24,R129ln1-7) & (Vol 1 of 2, 9/25/98 Com CERT. C144) Mr . Joneson , the appellant, testified in court at the unfitness hearing that he had missed quite a few visits with his daughter Luella due to scheduling problems of the caseworkers.(Vol 5 of 6, R162 ln9-24) and that he was not given an opportunity to make these visits up (Vol5 of 6, R163 ln12-18) The appellant testified that this is when the crying times occurred when Luella got older (Vol 5 of 6, R167 ln6-14) Catholic Charities could not relate any of these visiting events were Luella was especially upset as due to their scheduling sporadically and the cut down of visits. They interpreted as Luella did not want to be with her birth father but was bonded with her foster parents. Julie Yalowitz testified in the unfitness hearing that she observed Luella with her father, that she would caress her father, her father would hold her, she would go to him, hug him and things like that (Vol 3 of 6, R116 ln6-12). Christine Foley, one of Luella's caseworker testified that it's not that Luella only cries when she is in Mr. Joneson's presence, but that she cries when other individuals take her also. (Vol 4 of 6, R15) Also that she has never told her in her child language that she does not want to come or is uncomfortable at visits (Vol 1 of 1, 11/17/98 R89 ln22-24-90 ln1-4) No abuse , neglect had ever occurred at visits by appellant that Foley was aware of. (Vol 1 of

1 11/17/98 R93 ln4-6)

Father also believes that a large amount of stress was also due in large to the age of Luella Joneson. Doctor Benjamin Spock, a noted child therapist wrote in his article on Separation Anxiety Most babies experience a mild form of separation anxiety and continues up to 36 months. Separation anxiety brought on by a significant change in daily routine can strike at any time during childhood. Under Feeling the Fear it reads A toddler just like a baby may experience separation anxiety when the child starts a new day care program or her parents divorce. (SR 1 of 2,1/8/99 C171) This seems very much the same as with the cutting down of visitation and sporadic visits which Catholic Charities had done to Luella Joneson.

C Father supports visitation and communication with all his children. Appellant believes he is being thwarted by the agency's efforts and the foster parents cooperation with CC's suggestions. that prevent communication and bonding even to this very day (Vol 1 of 1 11/17/98 R11 ln13-17). . Letters written to Luella or foster parents were edited for content by the caseworkers.(SE 2 of 2, C272) Father believes in communication with foster parents for the best interests of his children. Throughout this case Catholic Charities has not supported any bonding with Luella Joneson and her father the appellant. Julie Yalowitz testified in the unfitness that she never had unsupervised visits because Julie felt uncomfortable with it (Vol 3 of 6 R122.ln9-R123 ln4) Visitations that were miss scheduled due to caseworker error was never made up. This included

over 14 visits. Gift giving as a show of father's love was looked upon as excessive and not the way to bond with the children. Even in Julie Yalowitz's case notes she had recommended that the foster parents not contact Mr. Joneson or reply to his letters sent. Letters were sent to the foster parents asking them to phone Mr. Joneson so he could talk to his daughter No calls were ever made (Vol. 3 of 9, TE 2-3) Even after Catholic Charities and/or the department of Children and Family Services stopped their services because the case had been terminated at the trial court level and the case was considered closed, The foster parents continued to provide no response to all inquiries about her health or well being. This even though the appellant had constantly encouraged the foster parents to have Luella call him (Vol 1 of 1, 11/17/98 R11 ln13-17). This even when letters were written directly to them asking for an up date upon Luella's well being without Luella knowing. I believe that this shows no concern for Luella's best interest not only now but in the future for her healthy development. Luella was never given a chance to have any "Good Byes with the appellant (Vol 1 of 1, 11/17/98 R18). The appellant to this day does not know how she has fared through the separation process as there was no explanation given or explained to him either by caseworkers or foster parents. In the bonding assessment done by Doctor Amy Anson from Michael Reese Medical hospital she recommends that if Luella should be adopted at some point in the future by the Villanueva family, it is recommended that she continue to have regular contact

with her biological father (Vol 7 of 9, TE198) The appellant believes both his daughter and he had a deep emotional and respectful bonding as parent and child that had developed over the years and that the uncooperativeness of the agencies and foster parents was cruel and unjust to his birth daughter Luella and definitely not in her best interest. The goal of adoption which included budgetary reasons for Catholic Charities (Vol 1 of 2, C71-72) and the foster parents desire to be the only parents to Luella Joneson seem to dominate the theme for adoption throughout this case.

D. Father Has offered a plan for relocation to Luella' neighborhood if need be for a eventual successful return home adjustment. Problems that would not be a factor if custody is regained by father would be switching schools (Vol 1 of 2, 11/17/98 R6 ln 19-R7 lm 12) , visitation with foster parents, or personal friends(Vol 1 of 2, R7) But if adoption is gained by foster parents and since they do not support communication with the birth parent Mr. Joneson, all communication would end. Christine Foley testified that it would be normal for a child to have difficulty adjusting in transition from one family to the next (Nol 1 of 1, R9 ln13-15) E. Luella's daily life routine would not be drastically changed. Even with two parents she has been in day care most of her life. (Vol. of 9, TE113) Both foster mother and father work practically 48 hours per week. Defendant would provide an in home sitter services which should be considered an improvement. Luella is spending a majority of her time in day care and this father believes that is not in her best

interest Christine Foley stated in court that the only reason for Luella not being returned home was because Mr. Joneson was found to be an unfit parent (Vol 1 of 1,, R97 ln6-24).

G. Father has full support for return of his daughter through his birth and adoptive mothers (Vol 1 of 2 C 181-183), church involvement (Vol 1 of 2, C223-225,236), A.A. sponsorship (Vol 1 of 2, C240)and a single parent group (Vol 1 of 2 C184) he attends occasionally

H Father supports the contact of Luella with her older sibling sisters and would allow overnight visits if the older children are not returned. (Something that is not currently done with the two separate foster families. Luella is not currently placed with her sisters because their foster parents were unable to care for another child at the time of Luella's placement.(Vol 7 of 9 Te 004)) The appellant is fighting for custody of all three daughters.

I The father has income and the ability to care for Luella Joneson if she is returned home. Therefore the father of Luella Joneson humbly pleads with the court to reverse the judgement for the termination of parental rights as the evidence is compelling that Luella Joneson should be returned home to her birth father and not that she should be adopted. That there is a bond that exists And although Catholic Charities did not consider the ethnic and religious background of Mr. Joneson as important for his daughter. The appellant believes that it is important for her healthy emotional and mental development. Also that there is a home for Luella with

income to provide for her and environment of people that would be in her best interest emotionally mentally and physically including two grandmothers, the church congregation of Mr. Joneson's faith, single parents groups, neighbors and friends. Also that stress created from the separation of the foster parents if it is severe could be alleviated by a gradual return home plan until Luella is adjusted to her new home environment and that visits and contact will always be allowed with Luella and her foster parents if it is the best for her mental emotional and physical health..

(4)

Supreme Court, U.S.
FILED

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NO

IN THE SUPREME COURT OF THE
UNITED STATES
October term 2000

EUGENE JONESON-PETITIONER
VS.
THE PEOPLE OF THE STATE OF
ILLINOIS

IN THE INTEREST OF
LUELLA JONESON

On Petition For Writ of Certiorari to the United States Court For the 1st District of Illinois

PETITION FOR WRIT OF CERTIORARI OF EUGENE HERMAN JONESON
APPENDIXES H - I

Eugene Joneson
Pro Se
11732 S. Prairie
Chicago, Illinois 60628
773-568 -4132

Date August 8th, 2001

58 pp

IN THE INTEREST)
OF:)Appeal from The Circuit
LUELLA JONESON) Court of Cook County
No 94JA1107)
Minor-Respondent)
Appellee)
) Appellate No. 98-3336
PEOPLE OF THE)
STATE OF ILLINOIS)
Petitioner-Appellee)
V.)
)
EUGENE JONESON) Mary Mulhern,
Respondent-Appellant) Judge Residing.

Reply Brief

EUGENE JONESON, Pro Se
2043 W. Dickens
Chicago, Illinois 60647
telephone 773-645-9695

"Appendix H"

POINTS AND AUTHORITIES

In re Bentsen v. Bentsen 412 N.E. 2d 1167 It shall be an affirmative defense to any allegation that father's failure was due to circumstances beyond his control or to impediments created by the mother or any other person having legal custody. Proof of such fact need only be a preponderance of the evidence

In 38 ALR 3d 812 perjury or willfully false testimony for an expert witness is basis for new trial on ground of newly discovered evidence

In 38 Alr 3d 813 annotation 2 as a general rule, newly discovered evidence, in order to justify the granting of a new trial , must be such as might reasonably be expected to change the result.

Expert Federal Rules of Evidence Opinion Testimony; Rule 7:09 Factual Basis: Sources of Knowledge. It is grounds for reversal if an expert witness is permitted to express an opinion before he has the supporting facts if they are not supplied in the course of the trial

in re L.L.S., 218 Ill. App3d at 461 , 577 N. E.2d at 1387 which erected the standard that progress is measured by the compliance with the court's directives, DCFS service plans or both such that the court will be able to return the child to the parent in the near future This standard has been criticized as too mechanical:

These plans are a means to an end, not an end in and of itself.

In re S.J. 233 Ill. App. 3d at 121, 598 N.E. 2d at 477 (" To place compliance with DCFS plans ahead of the ultimate fact of progress would be to let the tail wag the dog") Furthermore, there exist a danger of "bootstrapping" which would occur if the parents fails to do things on a service plan which were not necessarily related to previous shortcomings. This is exactly the experience the defendant had with the caseworkers at Catholic Charities the agency representing DCFS.

In Re S.J., 233 Ill. App. 3d at 119-20, 598 N. E. 2d at 476 The benchmark for measuring such progress is the situation that triggered the initial removal of the children, or In re M.C., 201 Ill. App. 2d 792,798, 559 N.E. 2d 236,239 (1st District 1981)the conditions in existence when custody was taken from the parents

The DCFS 89 Illinois Administrative Code Ch. 111, sec. 304.2 Minimum parenting standards means that a parent or other person responsible for the child's welfare sees the child is adequately fed, clothed appropriately for weather conditions, provided with adequate shelter, protected from severe mental, emotional or physical harm and provided with necessary medical care and education required by law.

Ballweg v. City of Springfield 499 N.E.2d 1373 Evidentiary error, namely the improper admission of

evidence is important ground for a new trial when the error was prejudice

Illinois Adoption Act, 750 Ilcs 50/1 Clear and convincing evidence is required to support a finding of parental unfitness Also Freeman v. Settle, 75 Ill. App. 3d 799,31 Ill. Dec. 788, 393 N. E. 2d 1385 (1979)

Old Second Natl. Bank of Aurora v. Gould, 75 Ill. App. 839, 31 Ill. Dec. 49, 393 N. E. 2D 1356 (1979) Testimony that is physically impossible or so inherently improbable as to be contrary to the common experience of mankind is to be given no consideration.

Illinois Family Law and Practice Child Custody 34-404 annotation 9 As to the weight to be given the results of the independent investigation, on the one hand they are advisory only and may be disregarded by the court. On the other hand, they may not be made the conclusive basis of the court's decision, since that would mean that the court would be delegating its power to decide questions of child custody, and the court may not do that."

Aguinaga v.. City of Chicago, 243 Ill. App. 3d 552 183 Ill. Dec. 648, 611 N. E. 2d 1296 (1993)Manifest weight means the clearly evident, plain, and indisputable weight of the evidence.

Dupree v. County of Cook, 287 Ill. App. 3d 135, 222 Ill. Dec. 504, 677 N.E. 2d 1303 (1997)
A verdict is contrary to the manifest weight of the

evidence when the opposite conclusion is clearly apparent. I.e., the findings appear to be unreasonable, arbitrary, and not based on the evidence.

City of Evanston v. Ridgeview House Inc. 64 Ill. 2d 40, 349 N. E. 2d 399 (1976)
The court must consider the weight and the quality of the evidence, which necessarily includes any favorable to the defendant, and pass on the credibility of the witnesses

Bau v. Sobut, 50 Ill. App. 3d 732,735, 8 Ill. Dec. 486 365 N. E. 2d 724 (1977)
The trial court does not simply decide whether plaintiff has made out a prima facie case but must make a final determination and enter judgement for defendant if plaintiff has not met this burden of persuasion of more probably true than not.

Ill. Rev Statues Domestic Relations 40 @ 1501 It shall be an affirmative defense to any allegation under subsection (N)(2) that the father's failure was due to circumstances beyond his control or to impediments created by the mother or any other person having legal custody, Proof of such fact need only be by a preponderance of the evidence

Hill v. Ben Franklin Sav. & Loan Assn., 177 Ill. App. 3d 51, 126 Ill. Dec. 462, 531 N. E. 2d 1089 (11988)
On review, the decision of the trial court will not be reversed unless it is contrary to the manifest weight of the evidence.

Kocal v. Holt (1992, 3d Dist) 229 Ill App 3d 1023, 172 Ill Dec 106, 595 NE2d 169
The correct standard to apply in a case seeking a modification of the child custody order is clear and convincing evidence.

the Illinois marriage and dissolution of marriage act re. Stat. 1983 ch. 40 section 604(a) guards the right to appeal by providing for a record of the interview. This record is mandatory and cannot be waived by the parties

In Family Law Quarterly, Volume XXV, Number 2 Summer 1991 adoption across religious lines is further discouraged by imposing an additional procedural requirement; if adoption is granted a person of a religion different than that of the child, the court must recite for the record the facts that compel the decision also in re Santos 105 N.Y.S 2d 716.

ARGUMENT

UNFITNESS

The major argument for the state was that after nine years of active involvement in services geared towards improving his parenting skills the defendant was properly found unfit for failure to make reasonable progress in his parenting skills. This was similar to the final judgement statement by Judge Mulhern This argument has two defective parts. The first being that

1a. services were not offered for over 9 years (3 years of case reviews , thus not allowing feedback for improving his parenting skills had been lost due to cancellation)Ill. Rev Statues Domestic Relations 40 @ 1501 It shall be an affirmative defense to any allegation under subsection (N)(2) that the father's failure was due to circumstances beyond his control or to impediments created by the mother or any other person having legal custody, Proof of such fact need only be by a preponderance of the evidence and 1b. that the services stated to be offered through the transcripts of Hector Rivera, the caseworker at that time were not In 38 ALR 3d 812 perjury or willfully false testimony for an expert witness is basis for new trial on ground of newly discovered evidence Personal testimony of the defendant (Vol 2 of 6, R188 ln21-R189 ln6) and trial exhibits. Also new substantial evidence reviewed by the judge in the motion to vacate the unfitness judgement for Luella Joneson and obtained through the Cook County Commissioners Office clearly indicate these services said to be offered for a period of nine years by the caseworker Hector Rivera could not have been because they were never offered at that clinic (Vol 1 of 2, 1/8/99, C227-235) Nor were they offered at any where else for Mr. Joneson by C.C. through Hectors own testimony.(Vol 1 of 6, R228 ln18-R229 ln4). In 38 Alr 3d 813 annotation 2 as a general rule, newly discovered evidence, in order to justify the granting of a new trial , must be such as might reasonably be expected to change the result.

The defendant and his attorney argues that it

was impossible to make any progress for the return of Luella Joneson because Catholic Charities had no intention of returning Luella to her father. The reasons given were 1. The caseworkers a. Provided the wrong services b. no services c. would not provide the services needed for her return in effective time frame or d. Would not cooperate with returning requests for services in a timely matter. In re Bentsen v. Bentsen 412 N.E. 2d 1167 It shall be an affirmative defense to any allegation that father's failure was due to circumstances beyond his control or to impediments created by the mother or any other person having legal custody. Proof of such fact need only be a preponderance of the evidence.

In actuality the state totally ignores the testimony of Mr. Joneson as did the case workers as to the fact that case reviews had been canceled for up to 3 years with Catholic Charities by Catholic Charities and thus no feedback for services provided.. This was confirmed by the case notes of Minna Greene, Mr. J's counselor.(Vol 5 of 9, Te239 canceled 4/30/92, TE243 canceled /13/93, vol 4 of 9 TE23 held a case review without notifying, Te34 no case reviews for two years, TE42 the 5th case review canceled, TE106 no notification of case reviews that were held in October 1990 and April of 1991)

Mr. Joneson also testified that he was not attending parenting classes at Erie Family Health Center but parental stress services.(Vol 1 of 6, R193 ln11-16) and that he had only attended one parenting skills class, although he had asked and wanted to be recommended for them they told him it was not necessary for him to

have parenting skills.(Vol 1 of 2, C110 ln211-24) Thus Mr Joneson had only attended one parenting class in ten years(Vol 3 of 9, TE176) The state could only provide one certificate of parenting classes taken from 1985 to 1995 as indicated in the trial exhibits(TE3 of 9, TE176). This should be proof in itself as proof of services not offered.

Tod Harrison , Mr. Joneson's current therapist also noted the non-cooperation of the Catholic Charities agency and testified the following. The caseworkers did not cooperate with him either by writing or phone calls when written or telephoned for recommendations or suggestions on what could be done to improve Mr. J's parenting ability for the return of Mr. J's children (Vol 5 of 6, R65 ln15-18).

If no progress in parenting skills was made the above reasons should certainly be the reason why. Mr. Joneson was thwarted by the efforts of the caseworkers. Ironically parenting classes were not offered until the parenting assessment team incorrectly concluded that after 9 years of classes nothing could be done to improve Mr. J's parenting abilities.(Vol 1 of 2, 9/25/98, C80) With that information available C.C. than offered Mr. Joneson hundred's of hours of classes of which he completed and attended (Vol 3 of 9, Te30, 44,47, 124 and Sr1 of 2, 1/8/99, C176) but their timing allowed the classes to be too late for the return home of the children because adoption screening had been passed on 4/16/96 before the classes were completed. Some were not even allowed to be entered as evidence for the unfitness trial for Luella Joneson as they were

completed after the petition for adoption had been passed which was on May 10th of 1998.(Vol 5 of 6, R147 ln7-9)

It also must be remembered that neither of the caseworkers had any type of training class on dealing with parenting skills or helping parents to develop their parenting skills(Vol 3 of 6, R70 ln10-14, R72 ln5-10)and(Sr 1 of2, 1/8/99 C109) Julie Yalowitz testified that there were certain things that she felt were instinctual from herself as appropriate parenting skills (Vol 3 of 6 , R71 ln5-22). This in effect reduced Mr. Joneson to following the personal directives of the caseworkers to try to satisfy the goals of the service plan. Many which were not even related to the case, but used so the workers would feel confident in their decision about the return home of the children. The 4th district has spawned a string of cases following its decision in re L.L.S., 218 Ill. App3d at 461 , 577 N. E.2d at 1387 which erected the standard that progress is measured by the compliance with the court's directives, DCFS service plans or both such that the court will be able to return the child to the parent in the near future This standard has been criticized as too mechanical: These plans are a means to an end, not an end in and of itself. In re S.J. 233 Ill. App. 3d at 121, 598 N.E. 2d at 477 (" To place compliance with DDFS plans ahead of the ultimate fact of progress would be to let the tail wag the dog") Furthermore, there exist a danger of "bootstrapping" which would occur if the parents fails to do things on a service plan which were not necessarily related to previous shortcomings. This is exactly the experience the

defendant had with the caseworkers at Catholic Charities the agency representing DCFS.

Another one of the states major arguments was that none of the defendant's witnesses had ever seen him with his children. Therefore they were not in the position to say wether Mr. Joneson was qualified with the parenting skills for the return home of his daughter. The state also argues that none of the witnesses that saw Mr. Joneson with his daughter Luella would recommend her return home.

Some important facts were left out by the appellees in their statement of facts about these witnesses which should lower the weight of their testimony.

Two important facts were left out of the testimonies of Minna Greene who had recommended that no one should support the return of the children to Mr. Joneson The first being that she had asked for more time for the evaluation of Mr. J. With his children but was denied it by Catholic Charities which could not provide the transportation needed for the visits. (Vol 3 of 6, R173 ln17–22, R195 ln2-R197 ln5))and 2 that she had never seen Mr. J with Luella Joneson but only the older sibling sister's of Luella with Mr. J(Vol 5 of 6, R226 ln10-24). Throughout her entire testimony not one word was said about Mr. J. and his ability to parent Luella Joneson through her observations and reports, the child this adoption petition is concerned about because she never had any contact with her.. .

The 2nd major witness from the parenting assessment team was Kathy Pesek. She presented

herself as the coordinator of the parenting assessment team. As she had no prior training for assessing parents for parenting skills (Vol. 4 of 6, R98 ln20-24, R99 ln1-7) her testimony should be considered less of a quality one and of lesser weight. Pesek presents numerous hypothesis statements and conclusions on the interpretation of her interviews with Mr. J and his children but has presented no notes, videos or tape recorded conversations to support these statements or actions were made by Mr. J. At trial court. It reads in the Expert Federal Rules of Evidence Opinion Testimony; Rule 7:09 Factual Basis: Sources of Knowledge. It is grounds for reversal if an expert witness is permitted to express an opinion before he has the supporting facts if they are not supplied in the course of the trial. Kathy Pesek also does not list any authorities as to her conclusions on parenting skills. When testifying in court as to why Mr. J. did not meet the minimum standards of parenting she could not give any authorities such as The DCFS 89 Illinois Administrative Code Ch. 111, sec. 304.2 definition but rather supported her theories through her personal observations which she self admitted she was untrained for. City of Evanston v. Ridgeview House Inc. 64 Ill. 2d 40, 349 N. E. 2d 399 (1976)The court must consider the weight and the quality of the evidence, which necessarily includes any favorable to the defendant, and pass on the credibility of the witnesses Bau v. Sobut, 50 Ill. App. 3d 732,735, 8 Ill. Dec. 486 365 N. E. 2d 724 (1977)

The argument this appellant is presenting is that

the manifest weight of the evidence of meeting the minimum parenting requirements is clearly in the defendant's favor and not clear and convincing for the state even though the state's major witnesses who had seen him with his children were recommending a finding of unfitness and termination of parental rights. Dupree v. County of Cook, 287 Ill. App. 3d 135, 222 Ill. Dec. 504, 677 N.E. 2d 1303 (1997)A verdict is contrary to the manifest weight of the evidence when the opposite conclusion is clearly apparent. I.e., the findings appear to be unreasonable, arbitrary, and not based on the evidence. The appellant as support for his argument argues that: 1. the attorneys for the state, were so bias against Mr. Joneson that instead of presenting the facts as they were, they made up evidence that supported their position for adoption. This totally created a prejudice in the fair representation of the defendant's case in order to argue a below minimum parenting standard for Mr. Joneson 's parenting ability(Vol 6 of 6, R15 ln10-17) without providing evidence that supported but contradicted actual records. 2 caseworkers were inaccurate in their testimonies as to Mr. Joneson's parenting skills and directly conflicted and or contradicted with the manifest weight of the evidence presented in the case aid and caseworker visitation report sheets. And 3. the Parenting assessment team who was to judge Mr. J's parenting skills A..provided reports that were not supported by evidence such as notes , videos and tape recordings which had all been made at the visits or interviews B. Used opinions without the support of reliable medical or legal authorities for

their report conclusions. Their team achieved the ability to know what kind of parenting standards somebody is using largely by their own observation(Vol 4 of 6, ln8-12) C. Was untrained in analyzing parents for parenting skills especially for men (Threshold's for Women)This also should be viewed as a form of sexual discrimination against the defendant and thus a violation of the constitution including equal protection provided by the 14th amendment D Information passed on to the parenting assessment team by catholic Charities such as the girls had already testified in court that they wanted to be adopted was untrue(TE 6 of 9, TE 35 at 3 &) and that the father was under a court order not to be with the mother was untrue and unsupported by evidence.. (Vol 1 of 2, 9/25/98, C81 Purpose of Assessment at 3) Because of this misrepresen
tation of the facts the whole tone and structure of the analysis was off from the beginning and created considerable bias against the defendant.. Evidentiary error, namely the improper admission of evidence is important ground for a new trial when the error was prejudice Ballweg v. City of Springfield 499 N.E.2d 1373

The plaintiffs in choosing to make a complete statement of facts in their brief repeatedly omitted the harmful facts against their case Also, many of the statement of facts were also based on the state's and guardian ad litem's attorney's arguments and not on evidence presented in court. Dupree v. County of Cook, 287 Ill. App. 3d 135, 222 Ill. Dec. 504, 677 N.E. 2d 1303 (1997)A verdict is contrary to the manifest weight

of the evidence when the opposite conclusion is clearly apparent. I.e., the findings appear to be unreasonable, arbitrary, and not based on the evidence.

For example on page 5 of the appellee brief they state that Luella was abused due to a substantial risk of injury as in the Petition for Adjudication of Wardship(CLR Vol 1 of 2, C5.9/25/98) They forgot to emphasize that this was due to the suspected mental illness of the parents as given in the temporary custody hearing order(Vol 1 of 2, 9/25/98 , C10). Defendant believes this was omitted to draw attention away from his argument that reasonable progress had been made for the return of Luella Joneson. DCFS service plans for the period Luella was brought into care also reflect this position (TE5 of 9, TE 149 explain why this rating was chosen, Father's psychological evaluations question his ability to parent) This was because the most important reason of why she came in to care for risk of harm, that of suspected mental illness of the parents was dismissed. The mental illness factor was the major reason the appellate court reversed the decision of the dismissal of the adoption petition of the trial court for the older sibling sister's of Luella Joneson. New intensive therapy by Todd Harrison as agreed upon by Catholic Charities concluded that no indications of this personality disorder existed In fact at the pretrial stage of Luella Joneson, all attorney's involved agreed that mental illness was no longer a issue (Vol 2 of 6, R138 ln6-14) The appellees argue that since the mental illness was never an issue at the trial level, thus his mental illness argument is moot on appeal This use of improper argument leaves useless the

interpretation of the statue for reasonable progress. Certain courts have interpreted this statue to hold that "reasonable progress" involves an objective judgement. The benchmark for measuring such progress is the situation that triggered the initial removal of the children, In Re S.J., 233 Ill. App. 3d at 119-20, 598 N. E. 2d at 476 or the conditions in existence when custody was taken from the parents In re M.C., 201 Ill. App. 2d 792,798, 559 N.E. 2d 236,239 (1st District 1981) The fact it was no longer as issue at trial level itself should be considered that it indeed was reasonable progress in itself wether argued or not. This interpretation of reasonable progress in the 1st district was ignored by the trial court and the trial court based its emphasis on the rulings of the 4th district where reasonable progress was measured by the parents compliance with court orders and DCFS service plans.

Even when the disposition hearing was reportedly the appellees, the state quotes as the conclusion that the respondent was unable to care for, protect, train or discipline Luella, but fails to put in the rest of the sentence . This could mislead the court to conclude this was an issue of parenting skills and not an issue of mental illness. The rest and the beginning of the sentence read that the father was unable for some reason other than financial circumstances to care for, protect. Etc. Luella.(CLR Vol 2 of 6, C37) No other detailed explanation was given.

Again on page 6 of the appellee brief, they again use statements not supported by evidence but rather the plaintiff's argument which is bias towards the defendant.

This being that Luella came into the system because Ms. O'Neill gave birth at home (with respondent attending) in order to prevent the Department of Children and Family services (DCFS) from finding about Luella's existence. Testimony by caseworker Julie Yalowitz stated because they were afraid that if they had gone to the hospital Luella would have been taken initially from the hospital. (Vol 2 of 6, R246 ln15-18) This was also part of Judge Mulhern's judgement reading. As argued in appellant's argument DCFS knew there was another baby to be born. In fact Mr. Joneson had told and written a letter to Willa Henning in court (Vol 1 of 2, 1/8/99 C137-140) several days after the baby had been born and that is how DCFS originally knew to go to the Joneson household. Substantial records are available that Luella Joneson was brought to Weiss Memorial after delivery at home by ambulance so both mother and daughter could receive proper medical treatment through Willa Henning's testimony (Vol 1 of 6, R103,ln7-10), and DCFS records. (Vol 3 of 9, TE194-210) and the defendant's own records (Vol 1 of 2, 1/8/99 C132-136) This evidence found in the record of both the state and the guardian certainly contradicts the above testimony of the caseworker Julie Yalowitz, the accusations of the state, and the judgement reading of the trial court judge, Judge Mulhern..

Again this tactic of using hearsay statements of witnesses in their argument continues on page 7. Plaintiff alleges in their statements that the defendant had been under a court order with Emily and Marilyn's case (Luella's older sisters) not to reside with the mother.

This court order has never been found in the record of Luella Joneson or been presented as evidence and therefore should be considered as an invalid argument. DCFS has had many years to present certified copies of this court order but have never done so.(Vol 1 of 6, R101, ln21-24-R1021-7) Agency workers and attorneys have used this order in many of their testimonies but have never supported it with the evidence that it ever existed.. This statement which has caused serious bias against the appellant with respect to the court should be considered as hearsay unsupported by fact and moot as to argument.. Evidentiary error, namely the improper admission of evidence is important ground for a new trial when the error was prejudice Ballweg v. City of Springfield 499 N.E.2d 1373

The appellees also bring up the issue of feeding adult cereal to Luella found in the investigation. Again the appellees do not give the complete story. The actual intake report only indicates cereal (Vol 1 of 9, Te 19, 21) It does not indicate adult cereal as the guardian plaintiff argued(Vol 5 of 6, R233 ln21-23) or that it was of a liquid consistency fed in a bottle as this defendant motioned in his order to vacate(Vol 1 of 2, 3/5/99, C174). Again the appellees in their statement of facts exagerrate the actual evidence and substitute the plaintiff's argument or their witness hearsay testimony.

This bias presentation of the statement of facts continues for parenting deficiencies listed on page 8, as the appellees tell how the defendant brought toys with small parts to a visit that Luella could have swallowed. They failed to point out that these toys were gifts for

Luella's older sisters and were not for Luella's use or play at the visit. Also that the older sister's did not live with Luella and the only time Luella would come into contact with these small parts was for that day and visit. Or that the environment was apparently safe enough that the caseworkers did not have to take the older girls gifts away to provide for the safety of Luella but she did suggest to put some of the smaller items away which the girls did do after opening their gifts..(Te 8 of 9, TE156b). Let it be noted that Julie Yalowitz, Luella's caseworker, testified that none of the toys Mr. Joneson brought to the visits for Luella had small parts (Vol 3 of 6, 146 ln23-24)

Some of the examples given for inappropriate gift giving , and inappropriate activities and toys to be brought to visits certainly seemed to plaintiff to beyond the normal These went from bringing a deck of hearts cards to visits or wanting them to bring kid magazines home that he brought Old Second Natl. Bank of Aurora v. Gould, 75 Ill. App. 839, 31 Ill. Dec. 49, 393 N. E. 2D 1356 (1979) Testimony that is physically impossible or so inherently improbable as to be contrary to the common experience of mankind is to be given no consideration. Caseworker testimony is also contradictory of their reports. They testified that Mr. J. always attempted to engage the children in appropriate activities.(Vol 3 of 6, R216 ln7-11)

The state continues on with the misrepresentation representation of the statement of facts with regards to parenting deficiencies by using one time that Mr. Joneson had difficulty at a parenting task

and making it an always situation The following examples are the proof that manifest weight of the evidence is in favor of the defendant. Caseworkers argue that Mr. Joneson was unable to even change diapers It was testified to that it was because he could not hold Luella still.(vol 3 of 6, R11, 26) Caseworkers took this one time he had difficulty and generalized it as always a parenting deficiency. They failed to mention the other overwhelming number of times that the defendant had no problems changing diapers. (VOL 2 of 9,TE156b,157B,159B,163B,168B,169B,170B,172, 176,178,188,190,194,196,210, ETC.)

The caseworkers did the same tactic when they reported the feeding of food to Luella. They have indicated excessive feeding and messiness with Luella at visits. These circumstances actually occured rarely In fact the case records indicated just the opposite of the caseworkers testimony (Vol 2 of 9, Te141b, 150b Father brought his usual- formula- clothes- diapers, 156b, 157b,158b, 160b father brought milk. Fed Luella and burped her.161b father fed Luella, 162b,163b,165b,166b Mr. Joneson fed Luella some strained sweet potatoes and prunes.. Mr. Joneson spillled a can of strained peas on the floor. Mr. Joneson cleaned up the mess with a colth that he brought.,167b Mr. Joneson fed Luella some spoonfuls of bananas, turkey, squash and peas. Mr. J. Also gave Luella some formula to drink, 168b Mt. J. Fed Luella some sweet potatoes and chicken. Luella did not really like the chicken, so Mr. J. Gave her a little sample of some peaches.169b bananas,beef and peaches and fed

Luella,170 Eugene fed luella some baby food,172 Luella ate a little but played with her food.176 Eugene placed his daughter on his lap and began to prepare some miolk to drink and some cereal to eat. Luella ate a little cereal and a littele bread, 178Eugene brought a cake to celebrate Luella's birthday, gave some cake to Luella but she did not like it very much Luella began nibbling on cheerios, Luella tried some cake again, luella spilled her cheerios all over the floor. Eugene cleaned up the mess. 182 The children played with Luella and ate snacks.188 Luella was given a baby cookie which she nibbled on for a little while. Eugene dipped the cookies in her juice to soften them up a little bit. Eugene gave Luella a small slice of chocolate which she was to mess up her hands and face. Eugen wiped Lulla clean and decided that the chocolate was not the best idea. 192 Eugene fed Luella 194 Mr. J fedd Luella he showed her how to drink from a straw. „ 196 Luella was not interested in eating.....222. As indicated by the evidence above in contradiction to caseworker testimony the case aid reports show numerous times of no mess and untidiness during visits. Aguinaga v., City of Chicago, 243 Ill. App. 3d 552 183 Ill. Dec. 648, 611 N. E. 2d 1296 (1993)Manifest weight means the clearly evident, plain, and indisputable weight of the evidence.

Again the plaintiffs fail to present all the evidence with regards to safety issues about Luella. The first being the incident where Mr. J. had left a knife in the middle of the table by Luella' older sister Emily to cut a brthday cake who than had to prevent Luella fom getting it. The reason this was so dangerous was because this

caseworker testified that this knife was sharp and metal. Later this was contradicted in cross examination and by another caseworker's testimony of the same knife.(Vol 6 of 6, R3 ln20-R4ln16) The evidence was that on least one other occasion, that there was a plastic knife(Vol 5 of 6, R203 ln24-R204 ln1-2) Also that the state eventually withdrew the statement entirely from its charges (Vol 5 of 6, R205 ln19-20)

The second major incident about safety was about a plastic bag that Mr. Joneson had started putting over his daughters head to eventually cut a whole out for a bib. This Mr. Joneson denied in court when testifying and confirmed that Julie had lied about the testimony also. (Vol 5 of 6, R202 ln16-24 -R203 ln1-16) The caseworkers and the state again try to present Mr. J. As a parent who failed to recognize unsafe situations. Again case aid records show a diifferent story about Mr. J, the defendant.(TE 2 of 9, Te157b the nat-father seemed to be bothered by that lump on Luella's head.Te158b Mr. J asked to speak to the supervisor. Ms. Baquai came and observed the bump and said she would call the foster mother. Mr. J. Said that she looked scared a lot, He also said that he hopes she was not getting abused at the day care center. Mr. J. appears to be concerned about Luella's well being, TE192 Eugene followed Luella aroung the room to make sure she was safe.) Both caseworker testimonies indicate that Luella's environment was safe.and that they felt that Eugene would not harm Luella.(Vol 4 of 6, R29 ln10-14)

The plaintiffs also argue that the defendant was

hostile and argumenative refusing to take advice. (Vol 3 of 6, 13-26) But when the visiting records are reviewed very few indicate a disagreement so bad that Mr. Joneson would not comply with directives. (TE 2 of 9, TE163b This worker asked father to check Luella iif she was hot because he left her jacket on. He took the jacket off.TE164b He left many wrappers to her gifts lying on the blanket and Lurella had started to put some of these in her mouth so he was asked to be careful and the wrappers were put up and out of the way TE165b This worker asked him to take off her snowsuit to make sure she would not get too warm Father agreed and did this.TE169b This worker explained that he should probably keep things away from her that can hurt her, but that she's too young to be disciplined. He then agreed and removed th plates so she could not get them., TE 184 Worker told dad to watch her because she was getting food on the furniture and her clothes.TE190 worker told him to be sure and clean her hands so he doesn't get her clothes all dirty Dad finished feeding Luella, TE 194 Worker told him to hold the chair and move it away from the table so she would not hit her head TE198 asked Eugene to begin cleaning up TE206 when worker suggested putting her bib on , Mr. J. Said "Oh yeah" TE210Luella spelt juice and worker had to tell mr. J to clean it up that there was juice on the floor) (TE9 of 9, TE 13b he than took out a new outfit for her & two headbands- one he asked if it was ok, but the worker said no due to it being an older child headband, the other was age appropriate.).Hill v. Ben Franklin Sav. & Loan Assn., 177 Ill. App. 3d 51, 126

Ill. Dec. 462, 531 N. E. 2d 1089 (11988) On review, the decision of the trial court will not be reversed unless it is contrary to the manifest weight of the evidence.

Julie Yaowitz testified that outburts or inappropriate behavior happened in more than half the visits but in examination of the record only several could be found (TE 2 of 9, TE200-203 or Te 8 of 9,146b Chris began to tell Mr. J that the girls could only take one book home. Mr. J began to question "the rules" that they could only take one thing home, he told the girl's this is why I am in court against these people, This is America and we are allowed to read what we want 152b When Marilyn & Emily asked him why Luella had been crying so much he told them that it was me who made them cry because I would not let them visit enough and I let her get too bonded with the foster parents.)

But in fact Julie Yalowitz, Luella's caseworker for most of the case never stopped any of the visits (Vol 3 of 6, R138 ln8-12) She did talk to the attorneys of the Luella but they did not believe that the damage or the instances were enough to terminate visits (Vol 3 of 6, R139 ln20-R140 ln8)

Again the caseworkers take incidents of Luella crying and try to make it a major reason why he was unable to meet her needs, No mention of collicky was ever made for Luella when she was a baby and all ideas that she missed the defendant and was letting out her frustration were denied as impossible even though she cried as a baby only when she came to visits in the beginning. (TE 2 of 9 141b,142b she cried again, he tries to talk to her, thinks she is crying because she

wants to go home143b,,144b,father brought formula, toys and clothes, played lullabyes ,Luella cried, he cried,145b,146b Lella cried,he tried talking to her to calm her down, 147b father brought new toys and formula, talked to her a lot she cried for 25 minutes, 148b father tries very hard to get luella to sop crying at visits, 149b father brought new stuffed animals ,Luella cried 25 minutes, 151b Luella cried , he holds her and talks to he but it doesn't help 152b No problems out of the ordinary, 154b Luella cried throughout visit nothing the father did stopped her 155b No crying reported 156b Father interacts with luella well 157b father bothered by bump on luella's head.159b Dad picked Luella up and put her on his lap Luella began crying Dad put Luella back on the floor, but she did not stop crying. Dad put her pink jumpsuit that he bought her on as she lay on the floor. Dad picked Luella up again and gave her more formula. Luella continued to cry and Dad gave her a pacifier. Caseaid took pictures of the two sitting on the couch. Luella stopped crying and started playing.) Very rarely did Luella cry at visits after this point in time. Mr. Joneson was never informed of crying by Luella before she left for visits from the adoptive home until it was reported iin a case review report.. Only one visitation report indicates this as a matter of trial records.(Vol 2 of 9, 199b Luella was crying and fidgeting when she was picked up so foster dad had to go to visits.) A pattern of distinct difference exists between case aid reports and caseworker reports exsists. This more than supports that the agency and the caseworkers were geared for adoption.

Note the only negative reports were monitored by the caseworker Julie Linkon Yalowitz or Christine Foley. Christine Foley testified that the majority of the visits that the respondent would have with his children he would not allow Luella to be with Marilyn, Luella would cry continuously and Emily would clean up and respondent would ignore caseworker suggestions.(R Vol 4 of 6, 6-7). Again this is contradicted by more than the majority of the case aid reports and sometimes even the caseworker reports. These reports indicate real family interaction.(TE 8 of 9, TE 122 b Father brought a baby walker seat for Luella and the girls and father put it together, Father allowed girls to hold the baby. Marilyn was very excited and had to be reminded to calm down TE 132 Father allowed Marilyn to feed Luella, Marilyn tried to tell father a story but he kept interrupting her and told her what to do with Luella. Emily also played w/ Luella She was very affectionate and appropriate, TE 136 report by the above Christine foley, Mr. Joneson was affectionate with the girls and made an effort to share his affection and attention, TE147 Emily, Luella & Mr. J.were playing on the slide, Marilyn was sitting across the room watching the other kids play. Mr. J. Came over twice to get her attention. She ignored him.TE150b Eugene asked Marilyn to read to Luella as previously agreed, Marilyn continued to play with her Barbie, Luella began crying so Eugene calmed her down, TE156b Luella said she had to go to the bathroom, Mr. J., worker, & Marilyn took her to the bathroom TE167 Emily said first let's get cleaned up, Mr. J. Told her to sit back and he'll do it, he wants her

to enjoy the visit) It should also be pointed out that the caseworkers Julie Yalowitz and Christine Foley did not attend the majority of all the visits but rather the caseaids monitered and made reports of the visits

Another major issue case workers brought up as inappropriate was the games, toys or activities brought for Luella to play with at visits. Again court transcripts indicate that not only did Mr. Joneson bring appropriate toys the majority of the time to visits .(Vol 5 of 6, R168ln8-25-R169ln2) but he actually belonged to a child development program that provided toys for a child according to its age group (Vol1 of 2, C162-165) Even ½ year case reports indicate age appropriate gifts for Luella.(Te9 of 9, Te 35,)

As Mr. Joneson's attorney summarized about the caseworkers. They did all kinds of things that were inappropriate and it was only for the reason so they could write negative things about it. They used all those things against him, but they did not cover their tracks good enough, Judge, because the visiting records are going to show that they sat there and they told inconsistaent stories. (Vol 6 of 6, R12) The caseworker also testifys that the defendant was unable to meet his daughters needs. (R vol 3 of 6, 50) Again the record is full of examples that he did and few that he did not. (Te 2 of 9, TE 156b Father interacts with Luella well. He appears to put thought into what to bring for her visits, TE159b Luella was lying on the floor on blankets that Dad had spread out for her to roam around on. Mr. Joneson's interaction with Luella was very positive . Mr. Joneson puts a strong effort to connect with her.

TE160b Father appears to care for Luella a great deal and prepared for the visits TE161b Father although angry with worker was able to enjoy his visit with Luella. He was organized for visit and prepared formula and toys TE166b Mr. Joneson was sitting on the floor with Luella resting on his lap. Luella seemed to be ina very happy and positive mental state. TE168bLuella sat on her father's lap while he talked to her about Thanksgiving and other interesting topics. Luella became interested and checked out all of the goodies placed before her. 168b Luella paged through a baby book as her father looked over her shoulder. Mr. Joneson produce a brush from his bag and began brushing Luella's hair, TE 170b Eugene layed on the floor and played with his daughter. TE172 Luella cooed and smiled a lot. She appears to be a happy child. TE176 Eugen placed Luella nest to him on the couch and they began drawing pictures with crayola markers. They built a house of the mini-cereal boxes. TE182 Mr. Joneson was appropriate with the girls and made an effort to share his affection and attention TE188 Eugene took Luella into his arms and gave her a big kiss, TE194 Mr. J. Took Luella in his arms and held her for a few mionutes. TE208 Luella began to cry so Eugene began to calm her down (TE9 of 9, Te6 After Eugene finished talking into the microphone , Luella began entering sounds into the microphone. TE9b he played games with her like tickling her & making funny noises to entertain her. TE19b Luella continued to cry and Dad gave her her pacifier Te21 the visit came to an end and the nat-father got her things together and told her he loved her and kissed her

"goodby") Dupree v. County of Cook, 287 Ill. App. 3d 135, 222 Ill. Dec. 504, 677 N.E. 2d 1303 (1997)A verdict is contrary to the manifest weight of the evidence when the opposite conclusion is clearly apparent. I.e., the findings appear to be unreasonable, arbitrary, and not based on the evidence. As Miss Wilson argued in her final argumen and asked the Judge to review these records closely because they are going to be totally contrary to what these workers have tried to lead you to believe.(Vol 6 of 6, R6 ln 13 -16) Ill. Rev Statues Domestic Relations 40 @ 1501 It shall be an affirmative defense to any allegation under subsection (N)(2) that the father's failure was due to circumstances beyond his control or to impediments created by the mother or any other person having legal custody, Proof of such fact need only be by a preponderance of the evidence..

The appellees argue that the defendant's lack of parenting skills progress was exacerberated by the defendant being asked to leave his parental stress group because his attendannce had become sporadic and his actions inappropriate. When Lynna Wilson, who was another member of the parental support group Mr. Joneson attended testified, her testimony again contradicted the states. She indicated that she consistently saw Mr. Joneson attending, did not see Mr. Joneson hostile or belligerent during the Parental Stress Group, and that she did see Mr. Joneson take feedback from the instructors and that she did get positive feedback from Mr. Joneson.(Vol 5 of 6, 135 ln24-136 ln15)

The court had ordered a clinical update to

access strictly the ability to parent on September 26th, 1996. (Vol 2 of 6, R122 ln10-16) The clinical was never done (Vol 2 of 6, R137ln16-R138 ln1) This made the Catholic Charities agency soley rely upon the parenting assessment team as their source for investigation material. Illinois Family Law and Practice Child Custody 34-404 annotation 9 As to the weight to be given the results of the independent investigation, on the one hand they are advisory onlya nd may be disregarded by the court. On the other hand, they may not be made the conclusive basis of the court's decsion, since that would mean that the court would be delegating its power to decide questions of child custody, and the court may not do that." Otherfavorable reports or evaluations were ignored by the court. Terry Weck, the DCFS moniter contact of C.C. wrote father demonsrates appropriate parenting skills in the case review plan of 6/13/94.

When the defendant tried to enter a new witness, John R. Lietzau, a licensed clinical professional counselor and child and parent therapist though a pre-trial motion before the best interests hearing by having him observe visits it was denied (4/7/98). This witness had evaluated Mr. J. with children , had experience at evaluating parents for parenting and was a well known family interventionist for fathers. (Vol 1 of 2 1/8/99, C20-24) A previous evaluation by the parenting assessment team done through Threshholds of Mothers was extremely bias and negative in their evlauation of Mr. Joneson. The dramatic differnce in professional opnion could entirely relate to sexual orientation or bias.

A denied continuance for the best interest hearing prevented Mr. Lietzau from testifying along with other important witnesses for the best interest hearing due to scheduling. At the post-trial motion hearing to vacate (8/6/98) again John Lietzau was not allowed to testify on father's behalf (Vol 1 of 1, 11/17/98, R125 ln8) with regards to new substantial evidence on why there is no apparent justification, in this evaluators professional opinion, to discontinue his parental rights (Vol 2 of 2 1/8/99, C275-281,,especially C281) John Lietzau's testimony would have added more weight to the manifest weight in favor of the defendant and make even more evident and convincing that unfitness and adoption were not clear and convincing rulings for the manifest weight of the evidence. Cited in Robert v Mcdaniel 161 NE2d 48__ newly discovered evidence must be of such conclusive and controlling character that it will probably change the result if new trial is granted.

This was especially bias by Judge Mulhern since at the beginning of the unfitness trial when Mr. Joneson was having problems with his atttorney because she would not present all the evidence Mr. Joneson demanded.(Vol 6 of 6, R35 ln20-R36 ln4) Judge Mulhern reasssured Mr. Joneson " that is why a lawyer was appointed for you to assist you with that so the rules and every thing else was complied with..... when issues come up if they're relevant I will permit them(Vol 6 of 6 R36 ln16-ln24) During the hearing for the motion for a new trial and to vacate judgement, Judge Mulhern read over the forty exhibits which constituted new evidence and denied the new evidence.The contradicted

Judge Mulherns above stated promise of responsibility. In the motion to vacate or retrial Judge Mulhern stated " and so the additional evidence is not permited since adequate opportunity was given to Mr. Joneson to present this at trial and I still find that the evidence presented in both the fitness portion and the best interest portion was more than adequate to support the findings it made.. (Vol 1 of 1,11/18/98, R122 ln10-R 123 ln2) The missing evidence was enough to cause both Mr. J's attorney to motion for withdrawel and Mr. J. To motion for his attorney's dismissal..

Best Interests

There are a few points in the reply brief with respect to the best interests hearing not argued in the appellant's brief. With regards to the best interest of Luella Joneson, the state has also made an error in stating that Luella wishes to remain with the foster parents in their statement for support of termination of parental rights. They have presented no evaluations reports or testimonys of witnesses that indicate that the above statement is clear and convincingly true.

In fact no court recorded interview waas ever made of Luiella's wishes about custody. Appellant beleives this was in violation of state law and the due process and equal protection provided by the 14th amendment of the United States Constitution.. In RE custody of Krause, cite as Ill. App., 444 N.E. 2d at 647 Subsection (2) directs the court to consider the wishes of the child as to his custodian In Child Custody

Illinois Family Law and Practice 34-407 annotation 9 guards the right to appeal by providing for a record of the interview. In 284 Ne.2d reporter, the court recognized that the interests of the father of an illegitimate child are no different from those of other parents. Condurrently section 604(a) of the Illinois marriage and dissolution of marriage act re. Stat. 1983 ch. 40 guards the right to appeal by providing for a record of the interview. This record is mandatory and cannot be wavied by the parties

When Christine Foley testified in the best interest hearing.the major compelling reason for termination of parental rights that was covered was Luella's desire to come to visits When asked if Luella had ever told her in child language that she does not want to come to visits she admitted she was never told that (Vol 1 of 1, R89 ln22-24)

Kathy Pesek of the parenting assessment team has managed to take several different answers to questions asked of Mr. Joneson and put them together to conconclud that only reason Mr. Joneson wanted the return of his daughters was so he could have a father image and feel better about himself. Again no evidence to support her testimony was produced such as case notes or recodings of her interview.

Christine Foley is also very contradicting. When examined in the unfitness hearing she testified there were occasions when she saw Luella caress and hug Mr. Joneson(Vol 4 of 6, R29ln10-17). (Julie Yalowitz, the caseworker befor christine, also testified to the same affect as to how she observed Luella caress

he father and hug him.(Vol 3 of 6, R 116 ln 6-12). Also that the girl's affectionately called their father "Daddy Gene" or " Gene"(Vol 5 of 5, R 6, ln 12-14)) In her testimony of the younger sister's unfitness trial Christine .Foley. exhibited her inability to recognize the emotions between father and daughters when she testified' I don't know what he was trying to do. I don't think I can answer that" when asked if the appellant tried to show love and affection to his daughter.(Vol 4 of 5, R 64 ln 19-22) But in the best interest hearing she testifies that Luella only gives hugs at the ends of the visits when prompted by the adoptive parents or her.(Vol 1 of 1, R 95 ln 11-16) This appellant seriously doubts how C. F. Could effectively determine the bond between father and daughter if she could not recognize the father's and daughter's ability to show their affection for each other. Kocal v. Holt (1992, 3d Dist) 229 Ill App 3d 1023, 172 Ill Dec 106, 595 NE 2d 169 The correct standard to apply in a case seeking a modification of the child custody order is clear and convincing evidence .Hill v. Ben Franklin Saving. & Loan Assn., 177 Ill. App. 3d 51, 126 Ill. Dec. 462, 531 N. E. 2d 1089 (11988) On review, the decision of the trial court will not be reversed unless it is contrary to the manifest weight of the evidence.

Also in her testimony Christine Foley clearly admits that the only criteria with regards to ethnic background was that the adoptive parents were Catholic.(Vol 1 of 1, 11/17/88, R 5 ln 7-12) Appellant believes that not only does that violate the rules set forth by the Catholic Charies agency (Vol 1 of 1, R 92 ln 11-

16) but also the religious freedom and family protection entitled to all families provided by the equal protection and due process clauses of the constitution. This especially since he had baptized his daughter as Methodist (Vol 5 of 6, R 169 ln 7-R 117 ln 4) and made it clear in court that he wanted Luella raised as a Methodist. In Family Law Quarterly, Volume XXV, Number 2 Summer 1991 adoption across religious lines is further discouraged by imposing an additional procedural requirement; if adoption is granted a person of a religion different than that of the child, the court must recite for the record the facts that compel the decision also in re Santos 105 N.Y.S 2d 716. This was not done by the court for Luella Joneson as evidenced by Judge Mulhern's final judgement. The testimony is clear that she is bonded to them; that she has lived there most of her life..... and at this age, I believe that due to the bond that she has with her foster parents, that termination permitting her to be adopted by the Villa Nuevas is in her best interest (Vol 1 of 1, 11/17/98, R 51 ln 15-R 52 ln 6)

In conclusion this appellant pleads with the court to reverse the finding of unfitness and to dismiss the adoption petition. Also to order the return of visitation as soon as possible Even if unfitness is determined and adoption unavoidable father asks for an open adoption with visitation rights. This appellant, pro se sincerely believes there is a defect in the Illinois constitutional law that will not allow the return of his child on a joint custody basis when there has been no evidence proven of severe mental, emotional or physical

abuse of his children on the father's part but only a lacking of parenting skills that the social system does not feel comfortable about. .

IN THE INTEREST OF:	)
LUELLA JONESON	)Appeal from The Circuit) Court of Cook County
No 94JA1107	)
Minor-Respondent Appellee	))
	) Appellate No. 98-3336
PEOPLE OF THE STATE OF ILLINOIS	))
Petitioner-Appellee	)
V.	)
	)
EUGENE JONESON	) Mary Mulhern,
Respondent-Appellant	) Judge Residing.

Petition to Rehear

EUGENE JONESON, Pro Se
2043 W. Dickens Chicago,
Illinois 60647
telephone 773-645-9695

"Appendix I"

PETITION TO REHEAR

Petitioner believes that there are several issues that the court has misapprehended or overlooked in rendering its decision to affirm the judgement of the circuit court for the finding of unfitness and termination of parental rights of the petitioner. Points Misapprehended or overlooked by the court on June 30th, 2000 include:

1.There is no evidence in the record to clearly support that L. J.'s caseworkers were biased.,

2.the court would not allow him to question the State's witness with regards to the parenting ability of the foster parents.

3. respondent argues that the circuit court failed to consider evidence showing that L. J. was of a different religion and nationality (race and ethnicity) than her foster parents but fails to cite any Illinois case law to support his claim that this is reversible error.

4. the court abused its discretion in refusing to grant a continuance so that his witnesses could be present but that a review of the transcript from the hearing shows that the respondent did not request a continuance

.5. Objective evaluations of respondent with L. J. reached the same conclusion that his caseworkers did that he was not able to engage L. J., could not focus on her safety, and had difficulty empathizing with her and anticipating her emotional and physical needs.

6. evaluations continued to note the same problems years after respondent began receiving services designed to improve his parenting skills.

7. Respondent was given many opportunities to show that he could make the kind of progress that would result in L. J.'s return home, but failed to do so. He took full advantage of DCFS referrals for services, but could not apply what he learned in classes.

_Points Misapprehended or overlooked

Point 1. There is no evidence in the record to clearly support that L. J.'s caseworkers were biased or thwarted Mr. Joneson's efforts for the return of his children.

The following is a list of evidence that have been misapprehended or overlooked by the court that would support that L.J's workers were biased or thwarted Mr. Joneson's efforts for the return o his children ;

1'. Visitation appointments lost were never rescheduled by Julie Yalowitz, Luella J's caseworker . Mr. Joneson's attorney Preston Jones had motioned the court to return the visits back to weekly on 5/16/95 (Vol 1 of 2, 9/25/98 Court Cert. C 39- 40) On June 21, 1995-Jude Swzed ordered and granted in part the return of visits every week (Vol 1 of 2, 9/25/98 C 42) On November 9th, 1995 actual visits were changed to twice a month. Coincidentallyvisitationanxietycontinuedthroughoutthe summer for Luella Joneson because Julie Yalowiz, her caseworker would not and did not comply with the court order of every two weeks. In fact the visits remained at

approximately once a month all summer long until Yalowitz returned them to at least twice a month. In her caseworker report plans it reads since August 1995, Luella has been very upset coming to visits, She begins to cry, kick and scream. Due to her reaction, her foster parents now accompany her in her car for visits (Vol 5 of 9, TE 102-103) Mr. Joneson wrote a letter to Julie Yalowitz's supervisor (Pam Palmentera) complaining that it had taken over 2 months for Julie to realize that the court order was for every 2 weeks and not for twice a month. (Vol 3 of 9, Te1 180) In court Julie denies she had any problem in determining the number of visits (Vol 3 of 6, R 140 ln 12-14) Julie's supervisor also responded with a letter giving Mr. Joneson two visits per month in spite of the court order of every two weeks (Vol 3 of 9, Te 121) The appellant Mr. Joneson also wrote a letter to Catholic Charities about June of 96 indicating that CC was not following the court order made by Judge Swzed and that unto that date they had missed at least 14 visits due to manipulating the visits to twice a month instead of every two weeks as ordered by court order (Vol 3 of 9, TE 25-26) This was also brought up in the appeal letter written on May 23, 1996 to DCFS (Vol 3 of 9, TE 67. Mr. Joneson asked for mediation with C.C. because Catholic Charities had constantly ignored the court order of visitation for Luella for every 2 weeks for the last 9 months (Vol 3 of 9, TE 64) (Also note the incomplete documenting of appellant's letter for the file of CC by Catholic Charities)

Point 2. Telephone calls were never returned to therapist

for feedback and services. Tod Harrison, Mr. Joneson's therapist, also noted the non-cooperation of the Catholic Charities agency and testified the following in trial court. The caseworkers did not cooperate with him by either writing or phone calls when written or telephoned for recommendations or suggestions on what could be done to improve Mr. J's parenting ability for the return of Mr. J's children (Vol 5 of 6, R 65 ln 15-18) This also resulted in the loss of counseling with Luella that was recommended by the Michael Reese Evaluation by Amy Anson .

3. False and inaccurate information was given to the parenting assessment team which affected their final report This included 1.that a court order existed that the father was not be living with the mother of his children and 2.that the two older sibling sisters had testified in court that they wanted to be adopted.(TE 6 of 9, TE 35 at 3

4.Caseworker reports by Julie Yalowitz and Christine Foley were inaccurate and only included information that would not benefit Mr. Joneson Letters written to his daughters were edited for content.

5. Caseworker services and help provided to father were non- existent unless father was to determine the services needed and than request them. Also services were not provided in a timely manner. This is explained in detail in point 6 below.

6. Previous case reviews had been canceled for over three years not allowing the father feedback for

improvement of his parenting skills as confirmed by the case notes of Mr. J's family counselor Minna Greene (Vol 5 of 9, Te 239 canceled 4/30/99 DCFS worker never appeared, TE 243 4/13/93 case review canceled) (Vol 4 of 9 TE 23 5/7/91 DCFS held a case review without notifying, TE 34 no case review for 2 years, TE 42 the 5th case review canceled, TE 106 no notification of case reviews that were held in October 1990 and April of 1991)

7. Caseworkers provided the wrong services. Confusion over volunteer parental stress group attendance and parenting classes by the caseworker Hector Rivera indicated that Mr. Joneson had been attending parenting skills classes for 9 years and still was unable to improve his parenting skills on setting limits and disciplining his children at visits. In reality Mr. Joneson had attended only one parenting class in ten years due to this error by the Catholic Charities agency. This new substantial evidence reviewed by the trial court judge in a motion to vacate the unfitness judgement of Luella Joneson and obtained though the Cook County Commissioner's Office clearly indicates that parenting class services said to be offered for a period of nine years by the caseworker Hector Rivera could not have been (Vol 1 of 6, R 228 ln 18 - R 229 ln 4) Thus Mr. Joneson had attended only one parenting class in ten years. (Vol 3 of 9, TE 176)

8. Caseworker testimony and information they passed on to evaluators was bias and oriented for adoption. Evidence given is ;

a. that Luella came into the system because Ms. O'Neill

gave birth at home (with respondent attending) in order to prevent the Department of Children and Family services (DCFS) from finding about Luella's existence. Testimony by caseworker Julie Yalowitz stated they(father and mother) were afraid that if they had gone to the hospital Luella would have been taken initially from the hospital. (Vol 2 of 6, R 246 ln 15-18) This was also part of Judge Mulhern's judgement reading. As argued in appellant's argument DCFS knew there was another baby to be born. In fact Mr. Joneson had told and written a letter to Willa Henning in court (Vol 1 of 2, 1/8/99 C 137-140) several days after the baby had been born and that is how DCFS originally knew to go to the Joneson household. Substantial records are available that Luella Joneson was brought to Weiss Memorial after delivery at home by ambulance so both mother and daughter could receive proper medical treatment through Willa Henning's testimony (Vol 1 of 6, R 103, ln 7-10), and DCFS records. (Vol 3 of 9, TE 194-210) and the defendant's own records (Vol 1 of 2, 1/8/999 C 132-136) This evidence found in the record of both the state and the guardian certainly contradicts the above testimony of the caseworker Julie Yalowitz, the accusations of the state, and the judgement reading of the trial court judge, Judge Mulhern.

b. The caseworkers allege in their statements that the defendant had been under a court order with Emily and Marilyn's case (Luella's older sisters) not to reside with the mother. This court order has never been found in the record of Luella Joneson or been presented as evidence

and therefore should be considered as an invalid argument. DCFS has had many years to present certified copies of this court order as indicated by Judge Szwed but have never done so.(Vol 1 of 6, R 101, ln 21-24-R 102 ln 1-7) Agency workers and attorneys have used this order in many of their testimonies but have never supported it with the evidence that it ever existed.. This statement which has caused serious bias against the appellant with respect to the court should be considered as hearsay unsupported by fact and moot as to argument.. Evidentiary error, namely the improper admission of evidence is important ground for a new trial when the error was prejudice Ballweg v. City of Springfield 499 N.E. 2d 1373

c. The caseworkers and attorneys also bring up the issue of feeding adult cereal to Luella found in the investigation . Again the appellees do not give the complete story. The actual intake report only indicates cereal (Vol 1 of 9, Te 19, 21) It does not indicate adult cereal as the guardian plaintiff argued(Vol 5 of 6, R 233 ln 21-23) or that it was of a liquid consistency fed in a bottle as this defendant motioned in his order to vacate(Vol 1 of 2, 3/5/99, C 174). Again the appellees in their statement of facts exaggerate the actual evidence and substitute the plaintiff's argument or their bias witness hearsay testimony.

Point 2.

The court would not allow him to question the State's witness with regards to the parenting ability of the foster parents. The court transcripts expressively indicate this

is true.

A better presentation of this idea is how the court basically relied upon the testimony of the caseworkers in a basic way which resulted in bias. When it came to questioning about specific situations that occurred at visits which brought up actual evidence about the foster parent's parenting skills the trial court Judge Mulhern said she did not want to get into it or it was irrelevant (Vol 1 of 1, November 17th, 1998, R 16 ln 7-8, R 17, ln 1-7}
. Many of these questions were directly related to the parenting skills of the foster parents.

Judge Mulhern would only accept general questions presented to caseworker Foley the way she wanted it.(Vol 1 of 1, November 17th, 1998, ln 10-12} This occurred directly after the specific questioning of Christine Foley on the parents involvement with Luella on which Christine Foley had no answers for.

Court transcripts show that if it came to answering any specific questions about Luella Joneson Christine Foley was at a loss of words and unqualified as she had been appointed as caseworker for Luella Joneson only six months earlier or a total of six visits..(Vol 1 of 1, November 17th, 1998, R 70 ln 14-16} even though she had participated in visits with her older sibling sisters and was aware of the case.

When asked if there had been any allegations of abuse or neglect in the foster home she answered no.(Vol 1 of 1, November 17th, 1998, R 71 17-23} This contradicts a caseworker report made by Laura Scott, Luella's caseworker for the first 11 months of her

care in CFS custody {Te 2 of 9, TE 157B, 158b} The father seemed to be bothered by the lump on Luella's head and asked to speak to the supervisor. Ms. Baquai came and observed the bump and said she would call the foster mother. Mr. J. said that she looked scared a lot. She also could not answer questions about 1. how long Mr. and Mrs. Villa Nueva worked, 2. how many hours Luella was in daycare, or 3. about the Villanuevas attendance in church with Luella.(Vol 1 of 1, November 17th, 1998 R 12, ln 4-24-R13 ln 1)

In this best interests hearing Judge Mulhern also showed bias or an abuse of discretion by failing to consider Luella's wishes with regards to adoption. In 3 Ill fam Law & Practice The court will determine custody in accordance with the best interest of the child by considering the wishes of the child's parent in addition, the court will examine the wishes of the child as to his custodian 750 ILCS 5/602(a) (2) A child' preference is an important factor in deciding custody.

Point 3. respondent argues that the circuit court failed to consider evidence showing that L. J. was of a different religion and nationality (race and authenticate) than her foster parents but fails to cite any Illinois case law to support his claim that this is reversible error.

Illinois has inadvertently addressed this issue with the Ill. Rev. Statues for Domestic Relations 40 @ 1501 It shall be an affirmative defense to any allegation under subsection (N) (2) that the father's failure was due to circumstances beyond his control or to impediments created by the mother or any other person having legal

custody, Proof of such fact need only be by a preponderance of the evidence. Placing Luella in a foster home that did not have the same religion or ethnic and cultural background surely should be considered an impediment for her bonding and return home to her birth parent.. This is true because not only was it important in meeting the Department of Children and Family Services of the State of Illinois guidelines for foster care placement , which were not followed in this case, but inhibited the religious and cultural bonding with respect to religion and race for Luella J, and her birth parent. Values that are so important to families that they are protected with constitutional law under the 14th amendment In Smith v. Organization of Foster families, Supra, at 862-863, 97 S. Ct. at 2119 (Stewart J. Concurring in Judgement) The interests of parents in their relationship with their children's are sufficiently fundamental to come within the finite class of liberty interests protected by the fourteenth amendment. Also in Santosky v. Kramer 102 S. Ct. 1388 m 91982) 1397 {8} a "the extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be condemned to suffer grievous loss" Also in Mathews v. Eldridge 424 U. S at 343, 96 S. Ct. at 907 Courts must examine all procedural protections offered by the State, and must assess the cumulative effect of such safeguards. As we have stated before, courts must consider " the families and the reliability of the existing procedures" before holding that the constitution requires more. At Mathews v. Eldridge, 424 U.S. 319.335, 96 S. Ct 8933,903, 47

L.E. 22d 18 The nature of the process due parental rights termination proceedings turns on balancing three factors: the private interests affected by the proceedings, the risk of error created by the state's chosen procedure, and the countervailing governmental interest supporting use of the challenge of the procedure. The issue of not adhering to religious and ethnic guidelines set by DCFS in effect was an act of constitutional error and thus considered to be grounds for reversal. This issue was presented in trial court to Judge Mulhern. (Vol 1 of 1, R 42, ln 6 - R 43 ln 6)

Additional state law could be found in re Santos 278 A.D. 373,105 N.Y. S. 2d 716 ,a court vacated an order committing for adoption to a Jewish social agency two sisters, aged seven and eight, both of whom as infants had been baptized as Roman Catholic. The court held that the children had a natural and legal right to their religious faith, which temporary exposure to another religion could not erase and in 331 Mass. 647,121 N.E. 2d 843 (1954) (Adoption denied to Jewish couple who had custody for three years of twins born to Catholic mother.. Family Law Quarterly, Volume xxv, Number 2, Summer 1991. Both Roman Catholic and Jewish faiths are considered Christian but there are first amendment inhibitions over issues between one religion and the other. 66 ALR 2d 1410 Religion as a factor in awarding child custody also in 34 POF 2d 423 Child Custody 34-407 annotation 7

Also in her testimony Christine Foley clearly admits that the only criteria with regards to ethnic background was that the adoptive parents were Catholic.(Vol 1 of 1,

11/17/88, R 5 ln 7-12) Appellant believes that not only does that violate the rules set forth by the Catholic Charities agency (Vol 1 of 1, R 92 ln 11-16) but also the religious freedom and family protection entitled to all families provided by the equal protection and due process clauses of the constitution. This especially since he had baptized his daughter as Methodist (Vol 5 of 6, R 169 ln 7-R 117 ln 4) and made it clear in court that he wanted Luella raised as a Methodist.

Point 4. The appellant states that the court abused its discretion in refusing to grant a continuance so that his witnesses could be present but that a review of the transcript from the hearing shows that the respondent did not request a continuance.

During Attorney Wilson's request to withdraw from representing Mr. Joneson on the Best Interest Hearing she also requested that Mr. Joneson be given 21 days to get new counsel in this case. (Vol 1 of 1, November 17th, 1998, R 59 ln 1-4)

Judge Mulhern was also fully aware that Mr. Joneson wanted to call additional witnesses and that Mr. Joneson wanted a continuance to do so. She also made it clear that they would have to be called and subpoenaed in order to appear (Vol 1 of 1, November 17th, 1998 R 65 ln 19-21). Mr. Joneson having only been appointed that day as to represent himself was not in the position legally by law to subpoena witnesses until the very moment she appointed him pro se (Vol 1 of 1, R 59,ln 9- 11). A continuance was also asked for several times in a round about way by Mr. Joneson's motions presented in court that day. This included the

motions; 1. to dismiss the best interest hearing that day. { Mr. Joneson used as one of the reason for dismissal was because his witnesses could not be there for the day (Vol 1 of 1. 11/18/98, R 44, ln 16-23). and 2 to duplicate the AcR Files of Catholic Charities.(Vol 1 of 1. 11/18/98 R 68 Ln 6-R69 ln 9} Judge Mulhern continued on to the best interest hearing anyway. (Vol 1 of 1. 11/18/98 R 69, 10-13}

Point 5. Objective evaluations of respondent with L. J. reached the same conclusion that his caseworkers did that he was not able to engage L. J., could not focus on her safety, and had difficulty empathizing with her and anticipating her emotional and physical needs.

Again the court has overlooked the manifest weight of the evidence which is truly supported by the case reports of the caseworkers and case aids and have concentrated more on the testimonies of the caseworkers and evaluators..

The court relies heavily on caseworker and investigator testimony on a few possible incidents as the manifest weight of the evidence for their affirmation instead of the manifest weight of the evidence in the record that clearly does not support the testimonies of the caseworkers or the evaluations of the evaluators.. In 34 POF 2d 424 Child custody 34-407 annotation 10 As to the weight to be given the results of the independent investigation, on the one hand they are advisory only and may be disregarded by the court.. On the other hand, they may not be made the conclusive basis of the court's decision, since that would mean that the court would be

delegating its power to decided questions of child custody; and the court may not do that.

The court lists a few examples of this behavior by citing caseworker Julie Yalowitz's caseworker testimony that indicated that the appellant Eugene J. was continually compromising Luella J's safety Two major incident's were given. The first being a sharp knife that was left in Luella's reach and the second being the appellant almost used a plastic bag for a bib for Luella J. 3. The intake report indicated that Mr. J. was feeding adult cereal to Luella and 4. At one time when caring for a two year old Mr. J. admitted he had struck the child.

The court has overlooked that these accusations in her testimony should be unclear and convincing as 1. the actual question of the sharp dangerous knife being within Luella's reach was withdrawn by the appellees as contradicting other caseworker testimony (Vol 5 of 6, R205)(Vol 6 of 6,,R3 ln20-R4 ln16)(Vol 5 of 6. R203 ln 24-R204 ln 1-2)

.2. the plastic bag over the head accusation was denied by Mr. Joneson and confirmed that Julie had lied about that.(Vol 5 of 6, R202 ln 16-24-R203 ln 1-16).

3. The feeding of cereal to Luella as one of the reasons the case came into care Let it be clear that the actual intake report says cereal (Vol 1 of 9, TE 19,21). It does not mention adult cereal as the guardian plaintiff argued (Vol 5 of 6, R 233 ln21-23) or that it was baby cereal of a liquid consistency so liquid it could be fed in a baby bottle with a nipple as this defendant argued in his motion to vacate (Vol 1 of 2, 3/5/99, C174).

4.Kathy Pesek of the parenting assessment team had

written that Mr. Joneson had admitted to her at one time he was caring for a young child, a 2-3 year old and that he had struck the child. This statement was solidly denied by Mr. Joneson as evidenced in the Catholic Charities appeal letter written on 5/18/96 (SR 1 of 2 App stamp 3/5/99, C 155) (Vol 9 of 9, TE 99)

Point 6. Evaluations continued to note the same problems years after respondent began receiving services designed to improve his parenting skills.

Evidence in the records show that no evaluations were given after the petitioner began taking parenting classes for the return home of Luella Joneson.

The first parenting class and only offered to Mr. Joneson before Luella Joneson was brought into care was in 1991(Vol 3 of 9 TE 176) In fact the caseworkers had mistaken parenting classes for volunteer parental stress services because they had failed to review further into the content of the service offered as by Hector Rivera's testimony (Vol 1 of 2, 1/8/99 C 190).

. New substantial evidence confirms these services were never offered as Mr. Joneson had testified.
(Vol 1 of 6, R 228 ln 18 - R 229 ln 4)

No other parenting classes were offered until after the current and only parenting assessment was made (Vol 5 of 6 R145 ln 23-R146 ln 6)

. At which this time an unlimited number of parenting classes were allowed and taken even though the

parenting assessment said that no intervention would be sufficient (Vol 5 of 9, R 196).

There were no evaluations of Mr. Joneson's parenting skills after the original parenting assessment because of the above conclusion. When Kathy Pesek of the Parenting Assessment team was questioned in court as to if there was ever an occasion where she evaluated someone and she was assigned to evaluate them a second time: and their parenting skills progressed or got better she answered " Yes, but those are the families where we make recommendations for further services. They engage in those services; and we do a follow-up evaluation; and we can judge their progress (Vol 4 of 6, R 127 ln 9-16).

In other words no follow up evaluation was ever given to Mr. Joneson after he had completed the parenting classes recommended by Catholic Charities hired by DCFS. Therefore there are no evaluations which continue to note the same problems years after respondent began receiving services designed to improve his parenting skills. Thus the original and only evaluation by the parenting assessment team was used as the measure for progress of Mr. Joneson's parenting skills. The information in the assessment report was based on services offered to Mr. J. during the period Mr. J's two older daughters were in care of Catholic Charities when only one parenting class was offered and not during the period Luella was in care and services offered. In Interest of Austin Cite as 378 .E.2d 543 [5] Because it is impossible to measure progress without referring to a prior status, current status and the process

by which movement from the one status to the other occurred, absence of evidence regarding the prior status would render a determination of " reasonable progress" meaningless.

In Interest of A.T. Cite at 555 N.E.2d 403 (ILL App. 4 Dist 1990) Determination of unfitness of parent must be based upon parenting efforts or progress made during the entire period between the adjudication and the filing of termination petition, and the length of the period is not limited to the 12 months immediately following the determination; 12 month period is a limiting provision which guarantee the parent a minimum of 12 months in which to improve the situation between the adjudication and a hearing on the issue of termination.

The adjudication order was entered on March 28,1995 (Vol 1 of 2, 1/8/99, C 26) ad the disposition order entered on 6/21/95 (Vol 1 of 2, 1/8/9, C38) and the hearing on the issue of termination was on 4/7/98(Vol 1 of 1, R 56- 58 ln 2-4). The supplemental petition for appointment of a guardian with right to consent to adoption was filed on May 10, 1996 (Vol 1 of 2, 1/8/99, C65). The only parenting assessment Evaluation report was completed on 2/12/96 (vol 5 of 9, R 190) No further evaluations were done no further services were offered unless asked for by defendant. Some of the parenting classes Mr. Joneson took were not allowed to be entered even though they were completed before the termination hearing (Vol 5 of 6, 147 ln 7-9)

. Evidentiary error, namely the improper admission or exclusion of evidence, is an important ground for a new

trial when the error was prejudicial Ballweg v. City of Springfield 499 N.E. 2d 1373

Point 7. Respondent was given many opportunities to show that he could make the kind of progress that would result in L. J.'s return home, but failed to do so. He took full advantage of DCFS referrals for services, but could not apply what he learned in classes.

Respondent argues the reason he was unable to make progress was because the workers and evaluators were untrained in helping parents in learning parenting skills During court testimony, when the appellant's caseworker Julie Yalowitz was asked if she had any specific training for dealing with parenting issues with parents or parenting skills of parents and those interactions with children, she answered that she did not receive any specific training geared for that. (Vol 3 of 6, R 70 ln10-14, R 71 ln 3-11, R 72 ln5-10) She testified that how she knew what appropriate parenting skills were at a visit was because of certain things that were instinctual from herself which she were felt were appropriate for parenting skills (Vol 3 of 6, R 72) Christine Foley also testified that she had no training in parenting skills in the best interest for Emily and Marilyn, Luella's older sibling sisters (Sr 1 of 2 1/8/99 C 109) Also the parenting assessment primary expert witness also had no prior training for evaluating the parenting capabilities of parents (Vol 4 of 6, R 98 ln 20-24, R 99 ln 1-7) Mr. Joneson's therapist, Tod Harrison unknowingly remarked about this evaluator's experience when she summarized that we do not see any

intervention as being sufficient to address the deficiencies in Mr. Joneson's parenting abilities (Vol 7 of 9, TE105) In Tod's testimony he state's that it is one of the central value of the field of mental health that nobody is beyond help (Vol 5 of 6, R 109 ln 7-10) The caseworker Julie Yalowitz was also unaware what was being offered in these classes (Vol 3 of 6, R136 ln 14-18) and so therefore were unable to tell if what the father of Luella J. was doing was what he had learned. The insufficiency of Yaowitz's training was apparent when she gave as examples of improper parenting skills such as bring a deck of cards when she was only 1 ½ years old(Vol 3 of 6 R 25 ln 12 -R 26 ln 1-2) or flash cards when she was not old enough to read (Vol 3 of 6, R 45 ln 10-15)

Contrary to caseworker testimony the record is full of evidence that Mr. J. could provide for the safety of Luella Joneson, was bonded to her and could empathize with her at visits and that he upon numerous occasions was able to change diapers or calm Luella down when she was upset,. These examples are listed in detailed in the amended brief for Luella Joneson.

In conclusion, this appellant summarizes that if there was no mental impairment for the father Eugene Joneson for learning his parenting skills. Than the most obvious choice left is that the services were not being offered that would provide for the progress needed for Luella J's return Home. In 750 Ilcs 50/1 486 Families Note 127 to find parent unfit under the adoption act section on ground there is inability to discharge parental responsibilities supported by evidence of mental

impairment, mental illness, or mental retardation and justification to believe that such inability to discharge parental responsibilities shall extend beyond reasonable time period, first it must be shown by competent evidence that parent suffers from mental inability sufficient to prevent him from discharging parent's normal responsibilities.

As all courts have admitted this delay in progress for the return home of Luella Joneson was not do to a mental impairment of the father. This appellant argues that it was do tor the failure of the CC agency to provide thorough case reviews without canceling, failure by CC to provide a report at the dispositional hearing of precisely what steps the parents must take in order to achieve the return of the child to their custody, failure to provide counseling for Luella with her birth father as recommended by the Michael Reese Evaluation, failure to provide regularly scheduled visits with Luella, failure to provide parenting skills classes offered with a before and after evaluation done (so progress could actually be measured) and the failure to provide thorough training of all the caseworkers in the basic parenting skills required by the court which prevented progress from being made for the return home of Luella Joneson. In Re Bentsen v. Bentsen 412 N.E. 2d 1167 It shall be an affirmative defense to any allegation that father's failure was due to circumstances beyond his control or to impediments created by the mother or any other person having legal custody. Proof of such fact need only be a preponderance of the evidence

In final appeal this appellant pleads with the

court to reverse the finding of unfitness and to dismiss the adoption petition as it is not supported by clear and convincing evidence. Also to order the return of visitation as soon as possible..Even if unfitness is determined and adoption unavoidable father asks for an open adoption with visitation rights. The appellant, pro se sincerely believes there is a defect in the Illinois constitutional law that will not allow the return of his child on a joint custody basis when there has been no evidence proven of severe mental, emotional or physical abuse of his children on the father's part but only a lack of parenting skills that the social system did not attempt to offer properly

(5)

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

NO.

IN THE SUPREME COURT OF THE
UNITED STATES
October term 2000

EUGENE JONESON-PETITIONER
VS.
THE PEOPLE OF THE STATE OF
ILLINOIS

IN THE INTEREST OF
LUELLA JONESON

On Petition For Writ of Certiorari to the United States Court For the 1st District of Illinois

PETITION FOR WRIT OF CERTIORARI OF EUGENE HERMAN JONESON APPENDIXES J - K

Eugene Joneson
Pro Se
11732 S. Prairie
Chicago, Illinois 60628
773-568 -4132

Date August 8th, 2001

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In The Supreme Court of the State of Illinois

IN THE INTEREST	)
OF:	)**Appeal from The Circuit**
LUELLA JONESON	) **Court of Cook County**
No 94JA1107	)
Minor-Respondent	)
Appellee	)
	) **Appellate No. 98-3336**
PEOPLE OF THE	)
STATE OF ILLINOIS	)
Petitioner-Appellee	)
V.	)
	)
EUGENE JONESON	) **Mary Mulhern,**
Respondent-Appellant	) **Judge Residing.**

EUGENE JONESON, Pro Se
2043 W. Dickens
Chicago, Illinois 60647
telephone 773-645-9695

"Appendix J"

Alternative Prayer For Leave To Appeal And Appeal AS Of Right

Eugene J. Pursuant to Illinois Supreme Court Rule 315 (a), respectfully petitions this court for leave to appeal from the Judgement of the Appellate Court of Illinois 1st District to use its discretionary power and accept the appeal due to the need for supervisory authority, the finality of judgement of this case. (preponderance of the evidence that the petitioner was thwarted by the efforts of the caseworkers and others related to this case v, father was unable to make reasonable progress in his parenting skills for the return home of the children) and conflicts between jurisdiction interpretation (manifest weight of evidence measured by evaluator or caseworker reports vs manifest weight of the evidence from the progress made from the conditions that brought the case into care),

Petitioner also petitions under rule 317 petition for appeal as a matter of both right and discretion as several questions under the constitution of the United States and Illinois has arisen for the first time in the appellate court with respect to religion, children's and putative father's rights with respect to visitation and custody before and after adoption, and the mentally ill..

JURISDICTIONAL STATEMENT AMD JUDGEMENT BELOW

On December 2nd, 1997 judgement was passed from the Circuit Court of Cook County finding the father, Eugene Joneson, unfit to parent. On April 7th, 1998 the father and mother's parental rights to Luella

Joneson were terminated. Post trial motions to reconsider unfitness and termination of parental rights and to reinstate visitation were denied on August 6th, 1998. The Notice of Appeal was filed on . On September 3rd 1998. On August 24, 1999 the appellant brief was allowed to be filed instanter.

The Appellate Court affirmed the trial court's decision and entered an order affirming the trial court decision on June 30th, 2000. After one extension of time, the Petition to rehear was filed on 8/15/2000. It was denied on September 7th, 2000. On September 25th, 2000 an affidavit of intent to file was m ailed to the clerk's office of the appellate court 1st District. On October 12th, 2000 a motion for the extension of filing time was filed with the Illinois Supreme Court Clerk. The 1st extension of time was allowed til November 14th, 2000.

POINTS RELIED UPON FOR REVERSAL

Under Illinois Supreme Court Rule 315 (a) the Illinois Supreme Court can use its discretionary power and accept the appeal due to the need for supervisory authority, the finality of judgement. And because of conflicts between jurisdiction interpretation of this case

In this case the finding of unfitness of the father Eugene Joneson was:

1. against the preponderance of the evidence, Ill. Revised Statues Domestic Relations 40 @ 1501 and In re Bentsen v. Bentsen 412 N. E. 2d 1167 It shall be an affirmative defense to any allegation under subsection (N)(2) that the father's failure was due to circumstances beyond his control or to impediments created by the

mother or any other person having legal custody. Proof of such fact need only be by a preponderance of the evidence. Countless examples are listed in the argument section of this petition.

2. not clear and convincing Kubisz v. Johnson 329 N.E. 2d 815 Where there is failure to produce clear and convincing evidence that parent is unfit within statutory definition, reversal of order terminating parental rights is proper, In this case substantial evidence has been presented that contradicts the conclusions that the State of Illinois Department of Children and Family Services agencies and hired evaluators have made.

3. against the manifest weight of the evidence in re Perez 528 N.E. 2d 815 A trial court's findings of parental unfitness in a proceeding to terminate parental rights and appoint a guardian with authority to consent to adaption will not be reversed by appellate court unless finding of unfitness is against the manifest wight of the evidence.. In this case the manifest weight of the evidence presented by the state and guardian is basically that which the state has provided through court ordered evacuations and agency progress reports and not supported by actual case reports, court records and evidence presented in court from the day the case came into care as is the manifest weight of the evidence for the petitioner is.

4. in violation of Due Process in People vs. Fierer 529 N. E. 2d 972 constitutional errors must be show to be harmless beyond reasonable doubt in Santosky V. Kramer 102 S. Ct. 1388 m (1982) 1397 [8] The extent to which procedural due process must be

afforded the recipient is in influenced by the extent to which he may be condemned to suffer grievous loss 5. An abuse of discretion of the trial court judge in interest of L.L.S 577 NE 2d 1387 a reviewing court will not substitute its judgement for that of the circuit court unless an abuse of discretion is shown.

It was also not in the best interest of Luella Joneson to be adopted when her fathers rights to custody and visitation were lost due to termination of parental rights because all safeguards to protect her rights to her birth family which are also protected by the 14th amendment of the Constitution were not taken or provided by the Catholic Charities agency or the State of Illinois.

Supreme Court Rule 317 provides for appeals to the Supreme Court as a matter of right when a question under the Constitution of the United States and or Illinois has arisen for the first time in the Appellate Court.

This included:

1..her right to an interview with regard to her preferences of custodian or visitation in re Custody of Krause Ill. App.,444 N.E. 2d 647 Subsection (2) directs the court to consider the wishes of the child as to his custodian, in 750 ILCS 5/602 (a) (2) A child's preference is an important factor in deciding custody, In Deyoung v. Deyoung 379 N.E. 2d 399 at (9) The law requires that competing custody be resolved in accordance with the best interest of the child, and the places upon the court the burden of determining where the interest resides. At 3-5) The second sentence says

that counsel shall " shall be present unless otherwise agreed upon by the parties " thus expressly allowing the parties to waive the right to have counsel present. The third sentence states that the " court shall causes a court reporter to be present " This provision does not authorize a waiver by the parties and we believe the imperative " shall mandates that a record be made of the interview)Records of in chambers interview of child to ascertain child's wishes as to his custodian and as to visitation is mandatory and cannot be waived by the parties

2. " The agency Catholic Charities falsified their reports in order to present evidence that would support adoption due to their budget financial reasons This is evidenced by their falsely reporting that Luella was in a home of similar ethnic and cultural background, and a home of the same religion. This reporting continued even after Mr. Joneson had his daughter Luella baptized Methodist and is evidenced in all the case review reports from the beginning of this case until the end under placement listing (Vol 6 of 9, TE 111 11/7/94, TE 186 10/18/95, TE 244, 04/09/96, Vol 7 of 9, TE 47 10/08/96, TE 84 4/7/97) This all being done without regards to Luella's birth family religion her right to be brought up in that same religion, and ethnic and racial heritage. I n Family Law Quarterly, Volume XXV, Number 2 Summer 1991 adoption across religious lines is further discouraged by imposing an additional procedural requirement; if adoption is granted a person of a religion different than that of the child, the court must recite for the record the facts that compel the

decision also in re Santos 105 N.Y. S. 2d 716 3 In 331 Mass. 647.121 N.E. 2d the court held that the children had a natural and legal right to their religious faith, which temporary exposure to another religion could not erase (Adoption denied to Jewish couple who had custody for three years of twins born to Catholic mother.) Also in 66 ALR 2d 1410 Religion as a factor in awarding child custody

3. Luella's right to visitation and custody by her birth father. In Interest of Otto B. 393 N.E. 2d 676 While a parent may be unfit to have custody of children, it does not automatically follow that such parent is unfit to remain the child's legal parent with attendant rights and privileges; on the other hand, the fact that parent makes an attempt to rehabilitate himself it does not necessarily preclude a finding of unfitness where such an attempt is unavailing Also in re Hurley (1976), 44 Ill. App. 3d 260, 2 Ill. Dec. 595 , 357 N.E. 2d 815)

UNDER Rule 315 1st Argument Finality of Decision the finding of unfitness of the father Eugene Joneson was ;

1. against the preponderance of the evidence, Ill. Revised Statues Domestic Relations 40 @ 1501 and In re Bentsen v. Bentsen 412 N. E. 2d 1167 It shall be an affirmative defense to any allegation under subsection (N)(2) that the father's failure was due to circumstances beyond his control or to impediments created by the mother or any other person having legal custody. Proof of such fact need only be by a preponderance of the evidence.

In this case the appellate court simply refused to accept any evidence presented in the record as being able to support that Luella's caseworkers were bias in their efforts to complete her adoption and thus thwarted her father, Mr. Joneson, in his attempts for her return.. This even though substantial evidence was produced for review from the record.

The Substantial evidence that Mr. Joneson was thwarted by the efforts of the caseworkers is included the following:

(1). Telephone calls were never returned to his therapist for feedback and services. Tod Harrison, Mr. Joneson's therapist, also noted the non-cooperation of the Catholic Charities agency and testified about this in trial court. This was also evidenced by letters he wrote to Catholic Charities during this period of time.. Testimony and evidence indicate the caseworkers did not cooperate with Tod Harrison by either writing or returning phone calls when written or telephoned for recommendations or suggestions on what could be done to improve Mr. J's parenting ability for the return of Mr. J's children (Vol 5 of 6, R 65 ln 15-18 and Vol 3 of 9, TE 15 letter dated 11/6/96)

(2). At the beginning of Luella's case, caseworker services and help provided to the father were non-existent and unqualified unless father was to determine the services needed and than request them (Vol 5 of 9, TE 156 Case review 8/12/94 Task at 3 DCFS and CC workers will continue to offer services to parents should they request them.) This even though the service plan task objectives specifically state in every review that the

C.C. worker will provide parents with the appropriate referral for services recommended in the plan (vol 5 of 9, R 57 at 2)

. The only services available were those that existed from Luella' older sibling sister's being in care and intense psychotherapy by LCSW Tod Harrison because the caseworkers were not aware of what services to provide (Vol. 1 of 9, TE 66 and Vol 2 of 9, Gal ex. #3, 184 or TE 155) . Also services needed were not provided in a timely manner and could not be as case workers and evaluators alike had no training in analyzing parents for parenting skills. This was true NOT ONLY for Julie Yalowitz, (Vol 3 of 6, R 70 ln 10- 14, R 72 ln 5-10) and Christine Foley, (Sr 1 of 2 1/8/99 C 109) caseworkers for Luella (Vol 5 of 6, R 221 ln 3-8), but the coordinator of the parenting assessment team, Kathy Pesek (Vol 4 of 6, R 98 ln 20-24, R 99 ln 1-7). She was the states main evaluator along with the above mentioned caseworkers used as witnesses for determining the unfitness of the father Eugene Joneson. This evaluator was also responsible for conclusion of unfitness on hundreds of other parents evaluated by the parenting assessment team S. CT. Rule 236 All other circumstances of the making of the writing of the record including the lack of personal knowledge by the maker, may be shown to affect its weight, but shall not affect it's admissibility

What is even worse, Pesek's conclusion that nothing could be done to improve Mr. Joneson's parenting skills, was used by both the state and the guardian in their conclusion why no reasonable progress

could never be made in Mr. Joneson's parenting skills (Vol 5 of 6, R 229 ln 17- R 230 ln 5). In actuality, no progress was made because the evaluators and caseworkers had no training in evaluating parents for improving the skills of parents as evidenced above. . .(3) . Caseworkers provided the wrong services or none at all. The following includes just a few examples..

A. Because of confusion over volunteer parental stress group attendance and parenting classes by the caseworker Hector Rivera, H. R. testified that Mr. Joneson had been attending parenting skills classes for over 9 years and still was unable to improve in setting limits and the disciplining of his children at visits (Vol 1 of 6, R 137 ln 24- R 138 ln 1, R 145 ln 6-8, R 186 ln 14-22, R 206 ln 22-24- R 207 ln 1, R 210 ln 14-16). In reality Mr. Joneson had attended only one parenting class in ten years due to this error by the Catholic Charities agency (Vol 1 of 6, R 193 ln 13-16 and Vol 3 of 9, TE 176). This new substantial evidence reviewed by the trial court judge in a motion to vacate the unfitness judgement of Luella Joneson and obtained through the Cook County Commissioner's Office clearly indicates that parenting class services said to be offered for a period of nine years by the caseworker Hector Rivera could not have been.(Vol 1 of 6, R 228 ln 18 - R 229 ln 4 and Sr 1 of 2, C 227) Even Mr. Joneson's testimony was that he had attended only one parenting class in ten years. (Vol 3 of 9, TE 176) This certainly could be viewed as another reason no progress could be seen in the parenting skills of Mr. Joneson Cormack v. Marshall 211 Ill. 519, 71 N. E. 1077. 671 I.R.A. 787

new conditions must have arisen to warrant the changing its prior custody determination

B. An evaluation update of the parenting assessment team to provide a measure of progress on the petitioner's ability to parent was ordered by the court. It was ordered on August 6th 1996 and given 30 days to complete (Vol 1 of 2, September 25th, C 126-127, and 142).. But It was not completed through Catholic Charities. Therefore there was no measure of progress that could be used through the parenting assessment team reports (Vol 4 of 6, R 120). IN Interest of Austin 378, N.E.2d 543 without referring to a prior status, current status and the process by which movement from one status to the other occurred, absence of evidence regarding the prior status would render a determination of "reasonable progress" meaningless.

The evaluation was done eventually by Doctor Marty Blackman who Mr. Joneson hired personally in 1997 (Vol 7 of 9, TE 146-154) It was considered inadequate by the state because it only measured progress of Mr. Joneson's mental and financial stability but did not provide any e vidence for the parenting skills progress because the children were not evaluated with it (Vol 5 of 6, R 230 ln 9-13) In Ballweg v. City of Springfield 114 Ill. 2d 107 499 N.E. 2d 1373, 102 Ill. Dec. 360 (1986) Evidentiary error, namely the improper admission or exclusion of evidence, is an important ground for a new trial when the error was prejudicial.

C. Dyadic therapy also was never offered to

Mr. Joneson by Catholic Charities although it was recommended by Amy Anson of Michael Reese Hospital (Vol 7 of 9, TE 196 Dispositions and Recommendations) This even though Mr. Joneson's therapist Tod Harrison repeatedly wrote letters asking for services and therapy so Mr. Joneson could have his children returned(Vol 8 of 9 TE 128 trusting a copy of this letter was delivered to C.C. about providers for family therapy 2/25/97, TE 115 Mr. Harrison requests a further conference to define planning and measurable goals in order to have the children returned to Mr. Joneson,. TE 131& 132 Please write me to let me know how I can better serve Mr. Joneson 11/27/95, TE 137 Please grant Mr. Joneson all the support and services to which you feel he is entitled to.)..

(4) Caseworker testimony and information they passed on to evaluators was bias and oriented for adoption. Evidence given is ;

A. Luella came into the system because Ms. O'Neill gave birth at home (with father attending) in order to prevent the Department of Children and Family services (DCFS) from finding about Luella's existence. Testimony by caseworker Julie Yalowitz stated this was done because they were afraid that if they had gone to the hospital Luella would have been taken initially from the hospital. (Vol 2 of 6, R 246 ln 15-18) This was also part of Judge Mulhern's judgement reading (Vol 2 of 6, R 211 ln 12-17)

As argued in appellant's argument DCFS knew there was another baby to be born. In fact Mr. Joneson had told and written a letter to Willa Henning in

court (Vol 1 of 2, 1/8/99 C 137-140) several days after the baby had been born and that is how DCFS originally knew to go to the Joneson household. Substantial records are available that Luella Joneson was brought to Weiss Memorial after delivery at home by ambulance so both mother and daughter could receive proper medical treatment through Willa Henning's testimony (Vol 1 of 6, R 1031 ,ln 7-10), and DCFS records. (Vol 3 of 9, TE 194-210) and the defendant's own records (Vol 1 of 2, 1/8/99 C 132-136) This evidence found in the record of both the state and the guardian certainly contradicts the above testimony of the caseworker Julie Yalowitz, the accusations of the state, and the judgement reading of the trial court judge, Judge Mulhern..

B. The caseworkers allege in their statements that the defendant had been under a court order with Emily and Marilyn's case (Luella's older sisters) not to reside with the mother. This court order has never been found in the record of Luella Joneson or been presented as evidence and therefore should be considered as an invalid argument. DCFS has had many years to present certified copies of this court order but have never done so.(Vol 1 of 6, R 101, ln 21-24-R 1021-7) Agency workers and attorneys have used this order in many of their testimonies but have never supported it with the evidence that it ever existed.. This statement which has caused serious bias against the appellant with respect to the court should be considered as hearsay unsupported by fact and moot as to argument.. Evidentiary error, namely the improper admission of evidence is important ground for a new trial when the error was prejudice

C. The caseworkers and attorneys also bring up the issue of feeding adult cereal to Luella found in the initial intake investigation . Again the caseworkers do not give the complete story. The actual intake report only indicates cereal (Vol 1 of 9, Te 19, 21) It does not indicate adult cereal as the guardian plaintiff argued(Vol 5 of 6, R 233 ln 21-23) or that it was of a liquid consistency fed in a bottle as this defendant motioned in his order to vacate (Vol 1 of 2, 3/5/99, C 174)

D Caseworker reports throughout Luella's case since Julie Yalowitz became a worker have indicated that Mr. Joneson threw the mother and Luella's older sister, Emily, out of the apartment and they had no where to go (Vol. 6 of 9,.TE 152) This contradicts the actual hearing because nothing of this nature was indicated or said (Vol 1 of 6, R 127 Emily O'NEILL was abandoned by the natural mother Frances O'Neill at a Catholic Charities office located at 721 North Lasalle. The staff there reported that mother had stated that she could not care for the child.).

E. Another example of how caseworkers passed on bias information about the father of Luella Joneson. is in the letters written when they were searching for Luella's mother. The letters were written as if the father was the only one they were searching for. In (Vol 3 of 9, TE 103) Since we do not know the whereabouts of the child's father, we are contacting all F. O'NEILL as in an attempt to locate the correct person.) The agency knew all the time where to find the

father of Luella all the time but really wanted to locate the mother (Vol 5 of 6, R 219 ln 15- R 220 ln 10).

F. Before Luella's case came in to care, caseworkers started indicating that there was a court order that father was not to be with the mother of the children (Vol 9 of 9, TE 31 1.at the time of Luella's birth, Mr. Joneson was court ordered not to be living with mother) But to this very day None has ever been presented this order as indicated by Judge Swzed (Vol 1 of 6, R 101, ln 21-24-R 102 ln 1-7)

G Testimony and reports by Julie Yalowitz also indicates a bias about a knife incident reported at a visit.. It was also withdrawn as a conclusion under cross examination (Vol 6 of 6, ln 6-23). Numerous other examples of these false reports are given in the appellant brief which included accusations of: (1) the children swimming in the lake of which evidence in the transcript record contradicts (Vol 1 of 6, R 177 ln 9-24- R 179) and (2) non evidenced statements by an evaluator that the father struck a two year(Vol 4 of 6, R 58 1-10) This the father denied and argued as here say in an appeal letter written on 5/18/96 (SR 1 of 2, App. stamp 3/5/99, C 155) and Vol 9 of 9, TE 99) and no case worker notes or recordings of the interview that contained this information were ever presented in court to validate the evaluators testimony

(5).. Visitation appointments lost were never rescheduled by Julie Yalowitz, Luella J's caseworker .On June 21, 1995 Jude Swzed ordered and granted in part the return of visits every week (Vol 1 of 2, 9/25/98 C 42) On November 9th, 1995 actual visits were

changed to once every two weeks. Coincidentally visitation anxiety continued throughout the summer for Luella Joneson because Julie Yalowitz, her caseworker would not and did not comply with the court order of every two weeks. In fact the visits remained at approximately once a month all summer long until Yalowitz returned them to at least twice a month but not every two weeks. In court Julie denies she had any problem in determining the number of visits (Vol 3 of 6, R 140 ln 12-14) The appellant Mr. Joneson also wrote a letter to Catholic Charities about June of 96 indicating that CC was not following the court order made by Judge Swzed and that unto that date they had missed at least 14 visits due to manipulating the visits to twice a month instead of every two weeks as ordered by court order (Vol 3 of 9, TE 25-26) This was also brought up in the appeal letter written on May 23, 1996 to DCFS (Vol 3 of 9, TE 67. Mr. Joneson asked for mediation with C.C. because Catholic Charities had constantly ignored the court order of visitation for Luella for every 2 weeks for the last 9 months (Vol 3 of 9, TE 64) (Also note the incomplete documenting of appellant's letter for the file of CC by Catholic Charities

(6)..Caseworker reports by Julie Yalowitz and Christine Foley were inaccurate and only included information that would not benefit Mr. Joneson There are lots of good example of this. In the ACR Case Review for 11/7/94- 5/95. On one page it states that the CC worker will aid father in developing an appropriate care plan for Luella if requested to do so, and father will develop an appropriate care plan if she is returned home

(Vol 6 of 9, TE 97, 101) Father also will do the same thing in individual therapy with Tod Harrison as agreed upon in the letter sent by C.C. on what Mr. Joneson can do to have his children returned to him (Vol 6 of 9, TE 64, 4). But in his case review evaluation Mr. Joneson was given unsatisfactory progress with regards to this issue because he was discussing day care arrangements with Tod Harrison (Vol 6 of 9, R 134 bottom of page) This was a no win situation for Mr. Joneson as the caseworkers were oriented towards adoption..

Nothing could be done to convince CC that Mr. Joneson had the proper parenting skills. Even actions such as bringing flash cards was considered inappropriate and unsatisfactorily progress because Luella was not at an age where she could recognize words (Vol 3 of 6, R 45 ln 10-15)
or the game of hearts or using glitter to make a picture (Vol 3 of 6, R 80 ln 12-17) In re SJ 233 Ill. App. 3d at 121, 598 N.H. 2d at 477 (" To place compliance with DCFS plans ahead of the ultimate fact of progress would to let the tail wag the dog") Furthermore, there exist a danger of "bootstrapping" which would occur if the parents fails to do things on a service plan which were not necessarily related to previous shortcomings.,

(7) .Bonding with Mr. Joneson and his daughters, Luella also had tow older sibling sisters in custody was hindered when letters written to his daughters were edited for content (SR 2 of 2, C 272)
(8). Previous case reviews before this case came into

care had been canceled for over three years not allowing the father feedback for improvement of his parenting skills as confirmed by the case notes of Mr, J's family counselor Minna Greene (Vol 5 of 9, YE 239 canceled 4/30/02, TE 243 /13/93, Vol 4 of 9, TE 23 held a case review without notifying, TE 34 no case reviews for 2 years, TE 42 the 5th case review canceled, TE 106 no notification of case reviews that were held in October 1990 and April of 1991) The state argues that even though services were offered Mr. Joneson was unable to make reasonable progress in his parenting skills. This completely contradicts the evidence which indicates the state never even tried to provided services for Mr. Joneson and if they did it would be services that did not apply to his parenting problems.

Under Rule 315 2nd argument on Finality of Decision and Conflicts between Jurisdiction Interpretation

The appellate court erred when it found the father of Luella Joneson unfit using evidence that the state had ordered for an evaluation and caseworker testimony as the manifest weight of the evidence instead of using the benchmark measure of progress from when the case came into care and progress made within 12 months afterwards.

The father of Luella Joneson was found unfit and his parental rights were terminated for failure to make reasonable progress for the return home of Luella Joneson.. Reasonable progress should have been determined by an objective judgement The bench mark for measuring such progress is the situation which

triggered the initial removal of the children. In re M.C. 201 Ill. App.2d 792 , 559 N.E. 2d 236 ,239 (1st Dist 1980) Certain courts have interpreted this statue to hold that "reasonable progress" involves an objective judgement. The benchmark for measuring such progress is the conditions in existence when custody was taken from the parents. Also in re Interest of L. N. 278 Ill. App. 2d 50-51 and In re S. J. 598 N..E 2d 477. But instead the manifest weight of the evidence presented by the state was from reports ordered and created by the state. In 34 POF 2d 424 Child custody 34-407 annotation 10 Use of investigators In some jurisdictions, the court may have an independent investigation made in court proceedings, by virtue either of statutory authorization or the exercise of the court's discretion, in order to obtain information needed by the court to make its decision. As to the weight to be given the results of the independent investigation, on the one hand they are advisory only and may be disregarded by the court. On the other hand, they may not be made the conclusive basis of the court's decision, since that would mean that the court would be delegating its power to decide questions of child custody, and the court may not do that.

In this case the cause for Luella Joneson's removal was the possible risk of harm that could occur to Luella Joneson due to her parents mental illness or by Mr. Joneson living with Luella's mother who was not cooperating by going through services with DCFS for her mental illness diagnosis. But Mr. Joneson the defendant completed over 60 session of therapy through

Tod Harrison his therapist who was accepted by Catholic Charities as adequately prepared to counsel Mr. Joneson for the return home of Luella Joneson and also moved away from the mother of his children.

All charges of mental illness were dropped at pretrial hearing as reason for a unfitness argument (Vol 2 of 6, R 136) due to this substantial psychotherapy progress provided by Tod Harrison, LCS (SR 1 of 2, Jan. 8th, 1998, C 90-93) and validated by Doctor Marty Blackman ,psychologist (Vol 2 of 6, R 180), Doctor Childers ,psychiatrist (Vol 8 of 9, Te 137), and John Lietzau, family interventionist (SR 1 of 2 Jan, 8th, C 94)

Even so the state submitted as the basis of their evidence reports that indicate mental illness. This includes for the state 1. the entire parenting assessment team report cover to cover, 2. a clinical Services report done by doctor Reebe from down stairs (ordered by the court and completed by a state psychologist), and 3. a psychiatric evaluation of the father by Doctor Tepas (Vol 4 of 6, R 128 ln 17- R 129 ln 14). Again 34 POF 2d 424 Child custody 34-407 annotation 10 Use of investigators applies to this situation.

Also when mental illness of the father living with the mother was no longer an issue for the return of Luella Joneson Catholic Charities who was providing the only workers monitoring L.J.'s case due to a recent restructuring of the Department Of Children and Family Services, began to create objectives for parenting for Mr. Joneson and demanded strict compliance to them. In re L.L.S., 218 Ill. App 3d at 461, 577 N.E.2d at 1387 which erected the standard that progress is

measured by the compliance with the court's directives, DCFS service plans or both such that the court will be able to return the child to the parent in the near future. This standard has been criticized as too mechanical: These plans are a means to an end, not an end in and of itself. In re S.J., 233 Ill. App. 3d at 121, 598 N. E.2d at 477 (" To place compliance with DCFS plans ahead of the ultimate fact of progress would be to let the tail wag the dog") Furthermore, there exist a danger of "bootstrapping" which would occur if the parents fails to do things on a service plan which were not necessarily related to previous shortcomings. Many unsatisfactory progress reports were given even though Mr. Joneson had cooperated with all services demanded by Catholic Charities. In Interest of Drescher Ill. App. 415 N.E. 2d 641 The law emphasizes that it is the efforts of the parent to carry out parental responsibilities, rather than their success, which should be considered in determining the correctness of a finding of unfitness.

Other evidence done by evaluators appointed by state appointed agencies submitted by the state was a bonding assessment done by Amy Anson of Michael Reese Hospital (Vol 4 of 6, R 128, ln 7 - 16) and the parenting assessment team. State Law that is applicable to the weight of this evidence is read in Blakey v. Blakey 391 N.E. 2d 222 the inability to nurture or interact is not a proper statutory basis for the removal of children in this state. The children were originally take away because of the injurious environment and the parents should not have their parental rights terminated for these other nebulous, uncharged reasons. To decide

otherwise would allow the state to terminate parental rights for non-statutory reasons which were originally uncharged and which parents have no reason to know are possible bases for the removal of their children.

Where a parent has made substantial progress toward correcting the condition that led to the removal of the child, the lack of what DCFS deems satisfactory interaction between parent and child in not justification for the termination of parental rights. in re S.J. 598 N.E. 2d 477

In this case in interest of Luella Joneson, the lower courts have completely overlooked or misapprehended the evidence presented in the record which show progress has been made by correcting the conditions that existed when custody was taken from the parent Eugene Joneson. This includes the dropping of risk of harm charges due to mental illness, separation from the mother, and substantial improvement in parenting skills as indicated by the record.

. In Interest of A.T. 555 N 2d 409 it reads the first interpretation of unfitness must be based solely on parenting efforts or progress during the period beginning with adjudication and ending 12 months thereafter. The second interpretation must be based upon parenting efforts or progress made during the entire period between adjudication and filing of the termination petition. Under this latter interpretation, the length of the period is not limited by the statue.

The Catholic Charities caseworkers who supervised this case for almost all of the first year, Nora Rodriguez (Vol 1 of 9, R 91 Case Planning

Acknowledgment 11/7/94)and Laura Scott (Vol 1 of 9, R 43-46 Transfer Summary , R 63 Service plan evaluation of progress 6/13/94, R 92 Case Planning Acknowledgment 11/7/94) did not even testify in court as witnesses and neither did Terry Weck from the Department of Children and Family Services (Vol 1 of 9, R 50 Client Service Plan),

Luella Joneson's case came into care on 2/8/94. (Vol 1 of 9, R 18). Adjudication was on 3/28/95 where she was found abused due to injurious environment (Vol 1 of 2,1/8/99, C 26)
The dispositional order was on 6/21/95 where it was determined reasonable efforts had been made and appropriate services aimed at family intervention were unsuccessful. (Vol 1 of 2, C 38). The supplemental petition for appointment of a guardian with right to consent to adoption was filed on May 10, 1996 (Vol 1 of 2, 1/8/99 C 65) a little over one year after case was adjudicated..

The issue in argument is wether the appropriate services offered in the 12 month after adjudication and during the entire period between adjudication and the filing of the termination petition resulted in reasonable progress for the return home of Luella Joneson.

This includes the arguments that reasonable progress was made because; 1. the charges of mental illness were dropped , one of the main reasons the petitioner believes the case came into care(Vol 1 of 2, C 10). Thus mental illness was also one of the benchmarks from which to measure reasonable progress. 2 The father stopped seeing the mother of Luella Joneson as

she would no longer cooperate with DCFS in the return home of Luella and as it was recommended by Catholic Charities as a condition for reasonable progress for the return home of Luella Joneson. 3. Case aid reports and cross examination of witnesses indicated that the manifest weight of the evidence was not clear and convincing that Mr. Joneson was unfit to parent his children. 4 Father complied with all service plan objectives which included a. documented A.A. attendance and sponsorship b. over 100 hours of parenting classes to improve his parenting abilities In Interest of L.L.S 577 N.E. 2d 1375 Infants 156 the Standard by which progress is to be measured is parental compliance with court's directives, the service plan or both In interest of Drescher Ill. App. 415 N. E. 2d 641 Both the Guardian and the State testified that Mr. Joneson had undeniably made the efforts in following their final arguments (Vol 5 of 6 R 219 ln 21-R 220 ln 21), but the bottom line was that he could not parent because his efforts were unsuccessful.(Vol 5 of 6, R 220 ln 22-R 222 ln 22).

The law emphasizes that it is the efforts of the parent to carry out parental responsibilities, rather than their success, which should be considered in determining the correctness of a finding of unfitness. But the reverse has happened in the ruling of the trial court Judge Mulhern.

Rule 317. A parenting Assessment was used in court whose basis for selection was that of the parent being mentally ill and its original purpose was to provide recommendations for the father to improve his parenting skills (Vol 1 of 2, 9/25/98 C 80)

. The petitioner was also informed that this assessment or team would not be used to make decisions about custody but was only to determine 1.what the parent could do and cannot do about what could improve parenting problems and to help develop the best possible service plan to improve the parenting ability of the parent This is evidenced by the pamphlet given to the petitioner before the assessment (SR 1 of 2, 1/8/99 C 85). As these reports were used as evidence in court, this petitioner believes it is a violation of due process through fraud and is reversible error to invalidate this adoption Racine Fuel Co. v. Rawlins, 377 Ill. 375, 36 N.E. 2d 710 (1941)

It was objected to by Mr. Joneson at the Best interest hearing in trial court on 4/17/ 98 as to its constitutionality (Vol 1 of 1, Nov. 17th, 1998 R 27 line 14-17).. It is a violation of the 14th amendment because it is discriminating against a certain class of parents with regards to mental illness. In People vs. Fierer 529 N.E. 2d 972. It reads Constitutional errors must be shown to be harmless beyond reasonable doubt. This petitioner believe that this has not been proven in this case.

Governor Edgar of the State of Illinois mandated that a commission to assess the parents of parents suspected of mental illness and the parenting assessment team was a result of this commission. (Vol 7 of 9, R 155) Even though the father did not meet the requirements for being severely ill, being hospitalized for over 5 years, the report was still done and included and concentrated on this perspective of mental illness. This is evidenced by the assessment made by Laura Miller,

psychiatrist , and Teresa Jacobson, psychologist.(Vol 2 of 9 , R 159).

Also the main coordinator of the Parenting Assessment Team, Kathy Peek, who was a child development specialist had 1.no prior or previous training at evaluating the parenting capabilities of parents for the improvement of their parenting skills (Vol 4 of 6, R 98 ln 20-24, R 99 ln 1-7), 2. No experience for evaluating fathers (SR 1 of 2, C 84-88 The agency doing the evaluation The Thresholds for Mothers Project only provided services for women) and 3. No training in evaluating emotionally disturbed adults (Vol 4 of 6, R 93) In her case report summary and in trial court testimony
until she actually started doing the evaluations agency was

Mr. Harrison, Mr. Joneson's therapist and the head supervisor of the Community Health Center testified at the unfitness hearing that it was not the standard of the medical health industry that nothing could be done to help a patient, but this is exactly what the P. A.T. did. As mentioned earlier this probably had to do with the inexperience of the coordinator Kathy Peek at analyzing parents with parenting skills.

Supreme Court Rule 317 provides for appeals to the Supreme Court as a matter of right when a question under the Constitution of the United States and or Illinois has arisen for the first time in the Appellate Court Under Rule 317

The appellate court erred in affirming the trial court's decision to terminate parental right. One of the

reasons being that there was no recorded interview made or presented in court with regards to Luella Joneson's wishes In 3 Ill Fam Law & Practice annotation 9:367 Practice Commentary The law is now that the custody and visitation sections in the Illinois Marriage and Dissolution of Marriage Act apply to parentage cases. In re Marriage of Ronald R. Slavenas 487 N.E 2d 739 Infants Record of in-chambers interview of child to ascertain child's wishes as to his custodian and as to visitation is mandatory and cannot be waived by parties. At 741 (3,4) It was therefore error to conduct the interview without making a record In Lear v. Robertson 463 U.S. 248, 261-262 (1983) clearly that fathers who have participated in raising their illegitimate children and have developed a relationship with them have constitutionally protected parental rights. Also in 3 Illinois Family Law and Practice reads at annotation 9.322 on interviews that the court may interview the child in chambers to ascertain the child's wishes as to his or her custodian. If counsel desires the court to cover any specific areas in the interview or ask any questions, they should submit those in writing and have then on record. Counsel must be present at the interview unless otherwise agreed upon by the parties, and the court must provide a court reporter who will make a complete record of the interview instantaneously to be part of the record in the case. The requirement that the interview of a child be recorded cannot be waived by the parties Petitioner interprets these statues as indicating that it was a violation of due process by not recording Luella Joneson's wishes with regards to

custody and visitation for the court.

The department of Children and family Services also should have considered important racial, ethnic and religious differences between her birth family's ethnic and cultural background and the prospective adoptive parents as is legislated for Illinois Department of Children and Family Services' Policy and thus as determined by legislative law.

The trial court Judge even admitted herself that there is no case law that indicates that a parent can have custody or visitation rights after their children are adopted (Vol 1 of 1, R 22 ln 119), but state statues indicate differently.

Conclusion

The court should accept this case for review because it conflicts with the basic rules and statues for determining the finding of unfitness of a parent, Especially determining wether the manifest weight of the evidence should be measured by the evidence produced by the state through its evaluators and caseworkers reports or the progress made from the conditions that brought the case into care). Also to determine the finality of judgement of the state, if the state in its efforts to cut down the over bloated system of foster care actually thwarted the efforts of the father in the return of his daughter Luella Joneson. In this case. did the preponderance of the evidence show that the petitioner was thwarted by the efforts of the caseworkers and others related to this case. This is largely due to the new social policy to cut down state caseloads for monetary reasons, and caseworker personal error and the loss of

representation of the department of Children and family services to provide caseworkers to monitor the services of Catholic Charities for the same financial reasons .. This virtually puts the determination factors for unfitness of the parents of children accused of abuse and neglect soles in the hands of a private agency and whoever they hire. This case is a prime example of how this abuse occurs with countless examples of how this happens.

Also several important basic violations of due process and 14th amendment rights provided by the United States Constitution for all parents have been violated with respect to: 1.religion.... adoption across religious faiths not condoned by parent 2. mental health.... use of report based on mental health that was fraudulently represented as being used to determine what could be done to improve parenting skills 3. visitation and custody with regards to illegitimate children's rights...no court recorded interview was made of the petitioner's daughter Luella Joneson with regards to her preferences of custody and visitation rights and 4 putative father's rights before and after adoption has been finalized....especially with regards to visitation and legal custody.

This undeniably requires the Supreme court of Illinois's supervisory authority. This especially since the act of adoption severs all ties with the birth parent and child and under current legislation offers no alternatives to this tragic conclusion. In this case, further legislation is needed that will allow the return of a child on a joint custody basis when there has been no evidence proven of severe mental , emotionnal or physical abuse of child

by the parent only a lack of parenting skills that the untrained social system is uncomfortable with for the children's return. This occurring when substantial efforts had been made to improve these skills by the parent by complete participation in DCFS plans and visitation of the children .Simply stated further legislation needs to be developed on the lines with that in Lael V. Warga 508 N.E. 2d 1095 and In re Hurley (1976), 44 Ill. A.. 3 d 260, 2 Ill. Dec. 595, 357 NE 2d 815) Although a parent may be unfit to have custody of children, it does not follow that parent is unfit to remain children's legal parent with attendant rights. Petitioner requests the court to review as further legislation is needed to clarify what conditions under the above statues will apply to this case. In Lear v. Robertson 463 U.S. 248, 261-262 (1983) Clearly fathers who have participated in raising their illegitimate children and have developed a relationship with them have constitutionally protected parental rights.

Again this case should also be considered under the 14th amendment as a constitutional right for putative parents with respect to custody and visitation, Especially when they are found unfit due to unreasonable progress in parenting skills and have maintained contact with their children and there is no dispute that reasonable efforts had been made for the for the return of their children.

Petitioner prays that this Court grant his request for leave to appeal

Respectfully submitted,

By _____
petitioner

90401244

In The Supreme Court of the State of Illinois

IN THE INTEREST)
OF:)Appeal from The Circuit
LUELLA JONESON) Court of Cook County
No 94JA1107)
Minor-Respondent)
Appellee)

) Appellate No. 98-3336

PEOPLE OF THE)
STATE OF ILLINOIS)
Petitioner-Appellee)
V.)
)
EUGENE JONESON) Mary Mulhern,
Respondent-Appellant) Judge Residing.

Motion For reconsideration of Motion For denying Leave To Appeal

EUGENE JONESON, Pro Se
2043 W. Dickens
Chicago, Illinois 60647
telephone 773-645-9695

"Appendix K"

MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION OF THE ORDER FOR DENYING PETITION TO LEAVE TO APPEAL

Eugene J. birth father acting pro se, respectfully motions the Illinois Supreme Court for motion for leave to file motion for reconsideration of the order for denying petition to leave to appeal.

JURISDICTIONAL STATEMENT AND JUDGEMENT BELOW

On December 2nd, 1997 judgement was passed from the Circuit Court of Cook County finding the father, Eugene Joneson, unfit to parent. On April 7th, 1998 the father and mother's parental rights to Luella Joneson were terminated. Post trial motions to reconsider unfitness and termination of parental rights and to reinstate visitation were denied on August 6th, 1998. The Notice of Appeal was filed on . On September 3rd 1998. On August 24, 1999 the appellant brief was allowed to be filed instanter.

The Appellate Court affirmed the trial court's decision and entered an order affirming the trial court decision on June 30th, 2000. After one extension of time, the Petition to rehear was filed on 8/15/2000. It was denied on September 7th, 2000. On September 25th, 2000 an affidavit of intent to file was mailed to the clerk's office of the appellate court 1st District. On October 12th, 2000 a motion for the extension of filing time was filed with the Illinois Supreme Court Clerk. The 1st extension of time was allowed til November 14th, 2000. The petition for leave to appeal was filed timely on that date.

The petition for leave to appeal was denied on January 29th, 2001. A motion for extension of time to file motion for leave to file motion for reconsideration of the order for denying petition to leave to appeal was filed on February 9th, 2001. The extension of time was granted and the due date to file motion for leave to file motion for reconsideration of the order denying petition for leave to appeal was ordered for March 1st, 2001 and was timely filed on March 1st, 2001.

POINTS RELIED UPON FOR REVERSAL FOR MOTION FOR RECONSIDERATION OF THE ORDER DENYING PETITION FOR LEAVE TO APPEAL

UNDER RULE 317

1. Factors balancing the nature of due process due parental rights termination were in direct violation of the fourteenth amendment and inconsiderate of grievous loss. Mathews v. Eldridge 424 U.S., at 343, 96 S. Ct. At 893 & 903, 47 L. Ed. 2d 18 The nature of the process due parental rights termination proceedings turns on balancing three factors: the private interests affected by the proceedings, the risk of error created by the state's chosen procedure: and the countervailing governmental interest supporting use of the challenge of the procedure The fourteenth amendment Article 14, Section 1 Due Process and Equal Protection All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No

state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law: nor deny to any person within its jurisdiction the equal protection of the laws.
Santosky v. Kramer 102 S. Ct. 1388 m(1982) 1397 [8] The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be ' condemned to suffer grievous loss'"

These constitutional violations include

A. a parenting assessment that was used that selects parents for evaluation of parenting skills solely on the reason of wether they have been diagnosed as mentally ill in the past. Psychologicals and psychiatric reports were very negative and supported the finding of unfitness based on a mental illness or impairment of the father Eugene Joneson. People v. Fierer 529 Ne2d 972 constitutional errors must be shown to be harmless beyond a reasonable doubt

Adding even more in violation of due process is that none of the evaluators or social workers involved in the case of Luella Joneson had any previous training in assessing parents for parenting skills. What knowledge they had was learned from the experience of the job which all had recently started. But their testimonies and reports provided the basis and manifest weight of the evidence for the finding of unfitness and termination of parental rights of the birth father In 34 POF 2d 424 Child Custody at 34-407 annot. 10 Use of investigators

In some jurisdictions, the court may have an independent investigation made in court proceedings, by virtue either of statutory authorization or the exercise of the court's discretion, in order to obtain information needed by the court to make its decision. As to the weight to be given the results of the independent investigation, on the one hand they are advisory only and may be disregarded by the court. On the other hand, they may not be made the conclusive basis of the court's decision, since that would mean that the court would be delegating its power to decide questions of child custody, and the court may not do that. In re Perez 528 N.E. 2d 815 A trial court's findings of parental unfitness in a proceeding to terminate parental rights and appoint a guardian with authority to consent to adaption will not be reversed by appellate court unless finding of unfitness is against the manifest wight of the evidence

B.Unsupported adoption by the birth father across religious lines. (Vol 6 of 9, TE 111 11/7/94, TE 186 10/18/95, TE 244, 04/09/96, Vol 7 of 9, TE 47 10/08/96, TE 84 4/7/97) The birth father was Methodist and the adoptive parents were Catholic. In Family Law Quarterly, Volume XXV, Number 2 Summer 1991 adoption across religious lines is further discouraged by imposing an additional procedural requirement; if adoption is granted a person of a religion different than that of the child, the court must recite for the record the facts that compel the decision also in re Santos 105 N.Y. S. 2d 716 3 In 331 Mass. 647.121 N.E. 2d the court held that the children had a natural and legal right to their religious faith, which temporary exposure to

another religion could not erase (Adoption denied to Jewish couple who had custody for three years of twins born to Catholic mother.) Also in 66 ALR 2d 1410 Religion as a factor in awarding child custody

C. Visitation and custody rules for putative father were denied by the trial court judge even though reinstatement of visitation , a stay of judgement, was motioned for by the birth father in post trial motions before the notice of appeal was filed. This was solely for jurisdiction reasons which petitioner argues is an erroneous ruling

Also. Luella J's right to an interview with regard to her preferences of custodian or visitation was overlooked by the trial court judge. In re Custody of Krause Ill. App.,444 N.E. 2d 647 Subsection (2) directs the court to consider the wishes of the child as to his custodian, in 750 ILCS 5/602 (a) (2) A child's preference is an important factor in deciding custody, In Deyoung v. Deyoung 379 N.E. 2d 399 at (9) The law requires that competing custody be resolved in accordance with the best interest of the child, and the places upon the court the burden of determining where the interest resides. At 3-5) The second sentence says that counsel shall " shall be present unless otherwise agreed upon by the parties " thus expressly allowing the parties to waive the right to have counsel present. The third sentence states that the " court shall causes a court reporter to be present " This provision does not authorize a waiver by the parties and we believe the imperative " shall mandates that a record be made of the interview) Records of in chambers interview of child to

ascertain child's wishes as to his custodian and as to visitation is mandatory and cannot be waived by the parties

D. The trial court judge also abused her discretion by not allowing a continuance of the best interest hearing and not allowing new substantial evidence and testimony to be presented or heard in post trial motions which indicated it was in Luella's best interest to maintain contact with her father.

In Hearson v. Graudine 87 Ill 115, it reads that a court should not refuse a continuance where the ends of justice clearly require it and an abuse of discretion in doing so will justify a reversal. And in Czyzewski v.Gleeson 364 NE 2d at 560 It is not necessary for the reviewing court to determine, as a matter of law, that the trial court exceeded or abused its discretion, but only to resolve wether justice is being done. In Santosky V. Kramer 102 S. Ct. 1388 m (1982) 1397 [8] The extent to which procedural due process must be afforded the recipient is in influenced by the extent to which he may be condemned to suffer grievous loss

In Lehr v. Robertson 463 U.S.248, 261-262 (1983) clearly that fathers who have participated in raising their illegitimate children and have developed a relationship with them have constitutionally protected parental rights:

Under Rule 315

2. The Preponderance of the evidence indicated it was not in the best interest of Luella Joneson to be permanently separated from her father permanently through adoption and no compelling evidence presented

was clear and convincing In Cebrzynski v. Cebrzynski (1978), 63 Ill. App.3d 66,72,19 Ill. Dec. 841,379 N.E. 2d 713) in a custody dispute between a natural parent and a third person, the latter must demonstrate a " compelling reason" why the natural parent should not be granted custody of a child. In Re Custody of Krause cite as, Ill. App., 444 N.E. 2d 647 Six factors for custody determination subsection (1) thereof states that the wishes of the child's parent or parents as to his custody is one of the relevant factors., subsection (2) directs the court to consider the wishes of the child as to his custodian, subsection(3) is the interaction and interrelationship of the child with his parent or parents, siblings, and any other person who may significantly affect his best interest, subsection (4) lists the child's adjustment to his home, school and community as a relevant factor for consideration., subsection (5) directs the court to consider the mental and physical health of all the individuals involved, subsection (6) allegations or threats of physical violence.

The trial court has completely ignored these factors in determining the best interests of Luella Joneson. No interview had been made of Luella Joneson with regards to her wishes with regards to custody. Luella's adoptive father was not of the same race as Luella or Luella's father. The adoptive parents were not of the same religion as Luella was baptized in or her father was raised with. Adjustment to the community was considered residing in a day care center because both of Luella's parents had to work in order to afford her upbringing..

Since the above factors were ignored by the trial court along with the efforts of the Catholic Charities agency to prevent the return of Luella, special attention for this case should be given to subsection (5) which directs the court to consider the mental and physical health of all the individuals involved. The father of Luella Joneson believes that if the order is not granted to reverse the adoption or retrial granted at least some type of open adoption should be allowed to remedy any damage caused by the current separation during litigation. In Lael V. Warga 508 N.E. 2d 1095 and In re Hurley (1976), 44 Ill. A.. 3 d 260, 2 Ill. Dec. 595, 357 NE 2d 815) Although a parent may be unfit to have custody of children, it does not follow that parent is unfit to remain children's legal parent with attendant rights. Petitioner requests the court to review as further interpretation is needed to clarify what conditions under the above statues will apply in this case.

3. Terminating parental rights solely for the reason of failure to make reasonable progress when parent complied with all service requests demanded by Catholic Charities Agency but was unable to convince them there would be a safe home return for Luella Joneson was not clear and convincing. In re Woods (1st Dist 1977,54 Ill.App.3d 729, 735, 12 Ill.Dec. 342, 369 N.E.2d1356).The law emphasizes that it is the efforts of the parent to carry out parental responsibilities, rather than their success, which should be considered in determining the correctness of a finding of unfitness. In re Taylor (1st dist. 1975) 80 Ill.aPP.3D 906, 909, 334N.E.2D 194 Traditionally, one of the obstacles that

could thwart a parent's actual visitation of his child included the misconduct of Department employees. This is especially true in the case of Luella Joneson because there is substantial evidence that Mr. Joneson's efforts for the return of Luella Joneson were thwarted by the efforts of the caseworkers. In Ill. Revised Statues Domestic Relations 40 @ 1501 and In re Bentsen v. Bentsen 412 N. E. 2d 1167 It shall be an affirmative defense to any allegation under subsection (N)(2) that the father's failure was due to circumstances beyond his control or to impediments created by the mother or any other person having legal custody. Proof of such fact need only be by a preponderance of the evidence These impediments included: (1). Telephone calls were never returned to his therapist for feedback and services Vol 5 of 6, R 65 ln 15-18 and Vol 3 of 9, TE 15 letter dated 11/6/96). (2). At the beginning of Luella's case, caseworker services and help provided to the father were non- existent and unqualified unless father was to determine the services needed and than request them (Vol 5 of 9, TE 156 Case review 8/12/94 Task at 3 DCFS and CC workers will continue to offer services to parents should they request them.) (vol 5 of 9, R 57 at 2), .(3) . Caseworkers provided the wrong services or none at all because of inadequate training(Vol. 1 of 9, TE 66 and Vol 2 of 9, Gal ex. #3, 184 or TE 155)(Vol 3 of 6, R 70 ln 10- 14, R 72 ln 5-10)(Sr 1 of 2 1/8/99 C 109) (Vol 5 of 6, R 221 ln 3-8),(Vol 4 of 6, R 98 ln 20-24, R 99 ln 1-7).(4) Caseworker testimony and information they passed on to evaluators was bias and oriented for adoption.(Vol 4 of 6, R 98 ln 20-24, R 99

ln 1-7).(Vol 3 of 9, TE 176), (5).. Visitation appointments lost were never rescheduled by Julie Yalowitz, Luella J's caseworker, (6)..Caseworker reports by Julie Yalowitz and Christine Foley were inaccurate and only included information that would not benefit Mr. Joneson, (7) .Bonding with Mr. Joneson and his daughters, Luella also had two older sibling sisters in custody, was hindered when letters written to his daughters were edited for content
(8). Previous case reviews before this case came into care had been canceled for over three years not allowing the father feedback for improvement of his parenting skills as confirmed by the case notes of Mr, J's family counselor Minna Greene

There is also conflict in jurisdictional interpretation of the determination of unfitness statues. This being the benchmark for progress of the 1st district versus strict compliance to Catholic Charities directives and court orders The appellate court erred when it found the father of Luella Joneson unfit using evidence that the state had ordered for an evaluation and caseworker testimony as the manifest weight of the evidence instead of using the benchmark measure of progress from when the case came into care and progress made within 12 months afterwards.

The father of Luella Joneson was found unfit and his parental rights were terminated for failure to make reasonable progress for the return home of Luella Joneson.. Reasonable progress should have been determined by an objective judgement The bench mark for measuring such progress is the situation which

triggered the initial removal of the children. In re M.C. 201 Ill. App.2d 792 , 559 N.E. 2d 236 ,239 (1st Dist 1980) Certain courts have interpreted this statue to hold that "reasonable progress" involves an objective judgement. The benchmark for measuring such progress is the conditions in existence when custody was taken from the parents. Also in re Interest of L. N. 278 Ill. App. 2d 50-51 and In re S. J. 233 Ill.App.3d at 121, 598 N..E 2d 477 The ultimate issue is the reasonableness of the progress that the parent has made, in light of all the circumstances in " moving beyond the parental deficiencies that led to initial removal of the child.

But instead the manifest weight of the evidence presented by the state was from reports ordered and created by the state evaluators and caseworkers.

In re L.L.S., 218 Ill. App 3d at 461, 577 N.E.2d at 1387 which erected the standard that progress is measured by the compliance with the court's directives, DCFS service plans or both such that the court will be able to return the child to the parent in the near future. This standard has been criticized as too mechanical: These plans are a means to an end, not an end in and of itself. In re S.J., 233 Ill. App. 3d at 121, 598 N. E.2d at 477 (" To place compliance with DCFS plans ahead of the ultimate fact of progress would be to let the tail wag the dog") Furthermore, there exist a danger of "bootstrapping" which would occur if the parents fails to do things on a service plan which were not necessarily related to previous shortcomings.

Many unsatisfactory progress reports were

given even though Mr. Joneson had cooperated with all services demanded by Catholic Charities. In Interest of Drescher Ill. App. 415 N.E. 2d 641 The law emphasizes that it is the efforts of the parent to carry out parental responsibilities, rather than their success, which should be considered in determining the correctness of a finding of unfitness.

The father Eugene J., petitioner pro se, again pleads with the court to reconsider the order denying the petition for leave to appeal as serious violations of due process and equal protection have occurred in the Illinois judicial system, there is a need for review of the finality of the judgement of unfitness and best interest and there is also conflict in jurisdictional interpretation of the determination of unfitness statues. This being the benchmark for progress of the 1st district versus 4th district's strict compliance to court directives and DCFS service plans with Catholic Charities as their representative agency.

Respectfully submitted,

_____

petitioner

(6)

Supreme Court, U.S.
FILED

01 297 AUG 10 2001

OFFICE OF THE CLERK

NO

IN THE SUPREME COURT OF THE
UNITED STATES
October term 2000

EUGENE JONESON-PETITIONER
VS.
THE PEOPLE OF THE STATE OF
ILLINOIS

IN THE INTEREST OF LUELLA JONESON

On Petition For Writ of Certiorari to the United States Court For the 1st District of Illinois

PETITION FOR WRIT OF CERTIORARI OF EUGENE HERMAN JONESON

APPENDIX L

Eugene Joneson
Pro Se
11732 S. Prairie
Chicago, Illinois 60628
773-568 -4132

31 pp

State of Illinois
County of Cook

In The Circuit Court of Cook County, Illinois
... Department of Juvenile Justice and Child Protection
Child Protection Division

In The Interest Of	)	No. 94JA 1107
Luella Joneson	)	
	)	Filed
Minor	)	98 March 26 PM 12;58
		Circuit Court of Cook
		County, Il
		Aurellia Pucinski,Clerk

Motion To Withdraw As Attorney of Record

Now comes, Petitioner, Attorney Wilson, and moves this Honorable Court to withdraw as attorney of record in the above captioned matter as follows:

1. That Petitioner is the attorney of record in the above captioned matter, which is presently pending and undisposed of before this Honorable Court.

2. That petitioner represents the Father, Eugene Joneson in this pending matter.

3. That irreconcilable differences have arisen between Petitioner and Father, Eugene Joneson, which now makes it impossible for counsel to meaningfully communicate with her client.

4. That all attempts to reconcile this matter have failed, and counsel believes it is in her best interest to withdraw as attorney of record, instanter.

5. That proper notice has been provided to all parties in this matter including Eugene Joneson at his last known address provided, by certified mail.

6. That it would be in the best interest of Eugene Joneson, that his Honorable Court allow him 21 days to retain new counsel in this pending matter.

Wherefore, Petitioner prays as follows:

1. That Petitioner be granted leave to withdraw as attorney of record in this matter instanter.

Registered
March 26, 1998
Aurellia Pucinski
Clerk of The Circuit Court

C25

State of Illinois
County of Cook
In The Circuit Court of Cook County, Illinois
. . . Department of Juvenile Justice and Child Protection
Child Protection Division

In Re The Petition of	)	No. 94JA 1107
Adjudication of Wardship of	)	
Luella Joneson	)	Filed
Minor	)	98 Apr-2 PM 2;39
		Circuit Court of Cook
		County, Il
		Juvenile Division
		Aurellia Pucinski, Clerk

Notice of Motion

To:

On 4/7, 1998 at 9:00 A.M., or as soon thereafter as counsel may be heard, I shall appear before the Honorable Judge Mulhern, or any judge sitting in her stead, in calendar number 4k in the Juvenile Court Building, 2245 West Ogden, Chicago, Il. 60612, or the courthouse located at 1100 S. Hamilton and present the attached pleading requesting: Motion to Dismiss Best Interests Hearing Attorney Signature "s/g Eugene Joneson , Pro Se, 2043 W. Dickens, Chicago, Illinois 60647, 773-645-9695.

RECEIVED APRIL 2ND 1998

C27

Motion to Dismiss Best Interest Hearing
(1) Notice of Appeal will be filed
(2.) Discovery includes recalling of witnesses not thoroughly evaluated during unfitness. Theses include:

(1) Laura Scott- caseworker for almost 1st year for Luella

(2) Willa Henning Intake worker

(3)Doris Abrew- LCSW from Public Defender's office

(4)Minna Greene- Salvation Army

(5) Kathy Pesek- Child Development

(6)Laura Miller- psychiatrist report

(7) Amy Anson - child psychologist

(8) Greg Dell- Pastor of Mr. Joneson and Luella

(9) The VillaNuevas- Foster Parents

(3) Evidence- (1) Birth cert. (2) Hospital Receipts (3) Prenatal notes(4) No abuse or neglect found against father (5) Letter to

C28

Willa Henning asking for help (6) brought in care due to risk of harm due t mental illness of parents. (7) No longer is mental illness and issue for kids (8)parenting skills. Examples given for minimum skills are wether here say or contradicting actual practice in profession

(3) If appeal is reversed the extra cost an time of court, state and father will be wasted.

C29

Summons To Appear For Jury Service

By Order of the Circuit Court of Cook County of Illinois
You are hereby summoned to appear for Jury Service at:
J. Daley enter 50 W. Washington ST. Room 1700 Chicago Il 60602

Juror Number	Service Date	Time
70636835 1 79	Tuesday April 07 98 1	9:00 AM

Dell Gregory 4989
3344 N Broadway St.
Chicago, Il 60657-3520

C30

BROADWAY UNITED METHODIST CHURCH

3344 North Broadway Telephone 773-348-2879
Chicago, Illinois 60657-3520 Fax 773-348-2521

March 20, 1998

To Whom It May Concern:

Please receive this as a verification that I am unable to appear in court on April 7 to testify in the case relating to the concerns of Mr. Eugene Joneson. My inability to be present is due to my summons for jury duty on that day(photocopy attached)

Sincerely
"s/g Gregory Dell"
Gregory Dell, Pastor

C 031

Appellate Record (Vol 1 of 2 1/8/99 C71-72)
Copyright 1997, Chicago Tribune
Headline: STATE EXPERIMENTS WITH HMO_STYLE FOSTER CARE FOES FEAR THAT KIDS WILL GET SHORT SHRIFT
Date: Monday September 15,1997 Section: news
Edition : North Sports Final
Length: Long 1483 Words
Author: Judy Peres Tribune Staff Writer
Text:
In a radical effort to downsize the bloated foster care system while improving the lot of its young wards the Illinois Department of Children and Family Services this summer has brought managed care to child welfare.

Not surprisingly, much of the debate over the promised virtues and feared pitfalls of managed care has come along as well. Designers of The DCFS plan say it will more than double the number of abused and neglected children placed in permanent homes but some experts worry wether such huge expectations will encourage contracting to sacrifice- service for dollars. Just a couple of months the experiment, it remains too early to know.

....Now, like a health maintenance organization dealing with physicians, the department pays providers of foster care services a flat fee based on a predetermined number of cases.

So if an agencies caseload increases, it absorbs the additional cost. But if the agency manages to reduce its caseload or provide fewer services, it can pocket the profit.

According to Joe Loftus, DCFS executive deputy director, and other department officials, the plan provides a financial incentive to move children into permanent living arrangements. The old fee-for- service system, on the other hand,

paid agencies to keep children in foster care— and, they said, contributed to the huge buildup of children in the system.

Despite the changes, however, Loftus emphasized that child safety remains a top priority.

And he stressed that this is not a return to the old k" family preservation" ideology, which encourages reunification with the child's natural parents out of "blind faith" that reunification was best. Loftus said the new system promotes adoption and subsidized guardianship, as well as family preservation.

" This is a way of doing the right thing for kids and families, " he said.

But many providers of foster care services, while applauding the plan's goals, fear the reform could put more children in jeopardy. And Cook County Public Guardian Patrick Murphy says the managed- care approach could be "devastating."

"The good agencies will behave responsibly, even when they have to take a hit to provide appropriate services, " Murphy said, "But the bad ones— and they've been coming out of the woodwork lately— will get rid of their kids and keep the money."

Although many states are experimenting with managed care in the area of child protection, no two plans are alike.

The program in Illinois, called "performance-based contracting went into effect July 1 in Cook County. So far, it applies only to children in the foster care of relatives whose cases are managed by private agencies— about 19,000.

But DCFS hopes to expand it soon to those in ono-relative and specialized care, and to the rest of the state.

DCFS oversees more than 50,000 children who have been removed from the custody of their natural parents, about 28,000 of them in the care of relatives and another 19,000 in

non-relative foster care. About 70 percent are managed by private agencies.

The U.S. Department of Health and Human Services says Illinois has the nation's worst record for keeping kids in foster care. 40 percent longer than New York and nearly twice as long as California, Loftus and Mark Testa, director of research for DCFS, said the department's caseload has stabilized in the last two years—but it remains 30 percent to 40 percent higher than it should be.

Among the causes for that, officials said are the incentive structure of the old system and the fear of caseworkers and courts to make a mistake. There have been several notorious cases in recent years in which children returned to natural parents ended up dead--including, Joseph Wallace, whose mother hanged him in 1993, and Frank Torres, whose parents were charged with his murder last month.

Enter performance contracting, which is designed to overcome the system's. imperfections by aligning incentives with the outcomes that are best for children.

According to a May report on the initiative, contracting will be paid for " outcomes, not activities" A positive outcome is defined as a permanent placement: reunification with natural parents, adoption or subsidized guardianship.

C72

State of Illinois
County of Cook

In The Circuit Court of Cook County, Illinois
. . . Department of Juvenile Justice and Child Protection
Child Protection Division

In the Interest of) No. 94JA 1107
Luella Joneson)
Minor)

Notice To Parents and Children of Shelter Care Hearing

Mother: Frances O'Neill
Address: 900 W. Argyle # 303
Chicago, Il 60640

Father: Eugene Joneson Gal: Patrick Murphy
Address: Same as above

On 2/14, 1994, at 9;30 A.M. before the Honorable_____
(address: 110 S. Hamilton, Chgo.Il. 60612Please ask at front desk
_____ The State of Illinois will present evidence (1) that (name of child or children:) see above are abused for the following reasons: risk of harm and (2) that there is immediate and urgent necessity" to remove the child or children from the responsible relative YOUR FAILURE TO APPEAR AT THE HEARING MAY RESULT IN PLACEMENT OF THE CHILD OR CHILDREN IN FOSTER CARE UNTIL A TRIAL CAN BE HELD . a TRIAL MAY NOT BE HELD FOR UP TO 90 DAYS.

C73

State of Illinois
County of Cook
In The Circuit Court of Cook County, Illinois
. . . Department of Juvenile Justice and Child Protection
Child Protection Division

In The Interest of	)	No. 94JA 1107
Luella Joneson	)	Filed
Minor	)	Feb 22, 1994
		Aurellia Pucinski,
		Clerk Circuit Court of Cook

Temporary Custody Hearing Order

(Chap. 37, Para. 802-7)

This cause coming to be heard upon the Motion of State for TC The courts having jurisdiction over the matter and parties, and being fully advised in the premises:

The Court Finds:

1. The minor's
Mother received 7101 notice and was not 7202 present
Father received 7103 notice and was 7104 present
2. Probable cause
7100 B. the basis of the finding is: The parents of this minor are mentally ill & unable to care for this minor.
3. Immediate and urgent necessity
7107 B. does exist to support removal of the minor from home: or the basis of this finding is : Same as above
4. Reasonable efforts: 7108 B. cannot, at this time, for good causes . prevent or eliminate the necessity to remove the child from the home The basis of this finding is same as above.

C74

ORDER OF THE APPELLATE COURT FOR OLDER SIBLING SISTERS OF L. J INDICATING LACK OF REASONABLE PROGRESS DUE LARGELY TO CHRONIC PERSONALITY DISORDER

Thus, in the face of this clear and convincing evidence of respondent's lack of reasonable progress toward reunification, due in large measure to his own chronic personality disorder, we find that the court's dismissal of the supplemental petitions was against the manifest weight of the evidence, and we reverse that judgment. L.L.S., 218 Ill. App. 3d at 461. In doing so we have found no bases in the record to support respondent's contentions that he was thwarted in his efforts by the caseworkers and others assigned to him. In Re Drescher, 91 Ill. App. 3d 658, 665 (1980)

The order of the circuit court of Cook County dismissing the State's supplemental petitions is therefore reversed, ad the cause is remanded for further proceedings.

Reversed and remanded.

CAMPELL, P.J., with O'BRIEN, J., and GALLAGHER, J., concurring.

C75

Information For Parents About the
PARENTING ASSESSMENT TEAM

A Project of Thresholds Motheer Project
and the
University of Illinois- department of psychiatry

INRODUCTION

Your DCFS caseworker has referred your family's case to the Parenting Assessment Team.

This team looks at families in which mental illness may have affected the way parents care for their children.

Families who agree to participate in the assessment by this team have the benefit of a complete review of their case by an impartial team. This team does not make decisions about custody. IT simply collects information to help in answering questions about what the parent can and cannot do, and about what might help improve parenting problems. This information is placed in a report for the DCFS caseworker, and Juvenile Court if needed.

This report should help the worker to develop the best possible service plan for your family.

The Parenting Assessment Team
Thresholds Psychiatric Rehabilitation Center
2700 North Lawrence Avenue
Chicago, Illinois 60614

UIC The university of Illinois of Chicago

C84-C85

Community Counseling Centers of Chicago
Anthony A. Kopera, Ph. D.
President & Chief Executive

March 24,1997

To whom it may concern;

I am writing on behalf and at the request of Eugene Joneson. I have been his psychotherapist since July 1995. I have been working with him primarily on issues related to the foster care of his daughters. Mr. Joneson has recently told me that a previous psychiatric evaluation diagnosed him with a severe personality disorder. This, he relates, has been the reason he is not being more strongly considered as an adequate parent. I do not believe that this is reasonable.

Although it is clear that Mr. Joneson has some personalty issues to work on, as we all do, I do not see him as having a severe personality disorder. In fact neither did our consulting psychiatrist and medical director when she evaluated him last year.

It is important to note that I have spent roughly forty more hours with Mr. Joneson than the evaluator who, Mr. Joneson relates, spent only one hour with him. I feel strongly that he has been able to do an excellent -job- improving himself and I see no reason that he shouldn't be considered as adequate parent.

Mr. Joneson has applied himself to the therapy process with openness and diligence, and I have rarely seen a parent with DCFS involvement mor willing to take the court's recommendations seriously, and to directly and honestly confront issues brought to his attention by the Catholic Charities workers.

Please consider this information, and give this nice gentleman all the consideration you find appropriate.

Sincerely, s/g T Harrison Supervisor
Todd Harrison LCSW Adult Out-patient Program

C90

Alan Childs, M.A. Psy. D.P.C.
Clinical psychologist
10415 Roberts Road
Palos Hills, Ill. 60454

Mailing Address
5920 Sauganash Lane
Chicago Ill. 60646

Telephone
708/422/2772

PSYCHOLOGICAL EVALUATION

Patient Name:	Eugene Joneson
Chronological Age	44 years
Date of Birth:	2/5/53
Date of Evaluation	6/20/97 & 6/23/972

Summary

Mr. Joneson was referred for a psychological evaluation to provide an assessment of his intellectual and emotional functioning. On presented IO measures, he achieved a Verbal IQ score within the Average range, while his Performance IQ score fell within the Very Superior range. This is an improvement over his earlier 1995 evaluation. He worked quickly and efficiently on timed tasks and was able to focus adequately over the course of the evaluation. Thus, intellectual functioning is intact.

However, he does have a concrete thinking style and presents as anxious, with a sense of urgency, regarding his ongoing court case. He does not want parental rights terminated and is preoccupied with thoughts regarding his children. He also appears sensitive to their needs with regard to the ongoing court process as well.

Mr. Joneson presented as good natured, but overly spontaneous in his speaking style, demonstrating verbal disinhibition. As noted, he had some difficulty organizing his thought processes, particularly during unstructured measures.

Diagnostically, *he meets the criteria for Alcohol* Dependence in Remission. During the current evaluation, he did meet the diagnostic criteria for a Personality Disorder. He is functioning well, working regularly, maintaining sobriety, and interested in social interactions with others. Thus, while his style was somewhat circumstantial and he did over-elaborate when speaking, he does not meet the criteria for schizotypal Personality Disorder, though he may manifest Schizotypal Personality traits. This diagnosis is consistent with Dr. Childers, Medical Director of the agency where he is currently receiving psychotherapy.

The above is found in Vol 7 of 9, R153 starting at Summary

R153

Family Interventions: Psychotherapy and Mediation
55 E. Washington, Suite 1410
John Lietzau, L.C.P.C. Chicago, Il. 60602-2109
Phone 312-551-1419
e mail: jklietzau

Re: Mr. Gene Joneson April 23,1998

Mr. Joneson has been in treatment with this therapist since February 11, !998. He has been seen for a total of 16 hours, including a Fathering Workshop he willingly attended at my request.

Mr. Joneson had been seeing Todd Harrison since 1995, for approximately 60 sessions. The reasons for his long therapeutic involvement are clear and justifiable. Mr. Joneson has been fighting for custody of his children in a system that appears to have already made up its mind that he has lost his case before all of his legal options have been exercised. Mr. Joneson is adopted himself so he doesn't have anything against someone being adopted. He has recently lost his case in Juvenile Court but has filed an appeal.

The issue is Mr. Joneson's allege personality disorder that SIMPLY DOES NOT EXIST according to Mr. Harrison (LCSW) and myself (LCPC). We have data from psychological testing to back up our assessments.

Additionally, this therapist, who is an adult adoptee and a recent adoptive parent (9 year old girl) through Catholic Charities and DCFS, has seldom seen a Father work harder to maintain contact with his daughters.

When my adopted daughter was my foster child, her birth mother stopped attending visitations for two years before we could adopt this girl. In addition, a thorough search was conducted at taxpayer expense before the birth mother's parental rights were terminated and the adoption went through.

It is criminal that a Father shows up for supervised visits,

studies parenting books. Pays for Psychological treatment and is still on the verge of losing his visitation rights.

" s/g J. Lietzau"
John Lietzau, LCPC

C94

The above is found in Vol 1 of 2. 1/8/99, C 94

NO TRAINING IN EVALUATING PARENTS FOR PARENTING SKILLS FOR KATHY PESEK COORDINATOR OF PARENTING ASSESSMENT TEAM Vol 4 of 6, C 98 ln 20-C99 ln7

Q. Did you have any degrees or any training in evaluating the parents for parenting skills?
A. Since I have been working with this team : yes,
Q So, all of the experience you have in evaluating parents or family skills has come through the assessment team?
A. Yes
Q. Did you have any training prior to that?
A. In assessing parents?
Q. Yes
A. No I work mostly with children and families.

C99

JULIE YALOWITZ HAD NO SPECIALIZED TRAINING IN ANALYZING PARENTS FOR PARENTING SKILLS.
Vol 3 of 6, R 72 ln5-22 or Vol 1 of 2, C 108 ln5-22

Q. And Catholic Charities never gave you any type of training class on dealing with parenting skills or helping parents to develop their parenting skills?
A If I don't have a full training process, no
Q. So then how is it that you know what's appropriate parenting skills to visit with a child?

A.. There are certain things that are that I fell are instinctual from myself that I feel that are appropriate parenting skills such as the safety of children over time and reading various documents. I have learned from, necessarily then or more appropriate interactions and how to judge that.
Q. So then you got involved. All of information on your own, you have not had any specific training?
A. I have had on ongoing supervision.

C108

Vol 3 of 6 R 70, ln 10-R7 ln 11
Q. Okay, And did you have any specific training with Catholic Charities for dealing with parenting issues with parents?
A. Not from Catholic Charities. That' basically my education.
Q. What do you mean the basis of your education?
A. My minor, my major in college was with child development and human behavior, and my masters degree in social work with a concentration in child and family interaction.
Q. Okay. That was your major in college, but did your major in college direct you on how to assess parenting skills, observe interactions between parents and children in a visitation setting?

C70

A. Also, the focus of my masters in social work was on child development and child welfare and family interaction. Did I receive a specific parenting classes? No, I'm not sure what you're asking.
Q. Did you have specific training for dealing with parenting skills of parents and those interactions with children? That's what I'm saying and trying to figure out.
A I did not attend a specific training session geared toward that, no.

C71

Louis A. Weiss memorial hospital
Chicago, Illinois

This certifies *That Luella Elizabeth Joneson was born t Mr. & Mrs. Eugene Herman Joneson in this Hospital at 11:15 o'clock, A.M. on Sunday the 30th day of January 1924 In witness Whereof the said Hospital has caused this Certificate to be signed by its duly authorized officer, and its Official Seal to be hereunto affixed*

S/g Dea M Haines
Administrator

C112

2/8/94

I Eugene Joneson have an apartment at

900 W. Argyle Apt 303

Chicago, Illinois 60640

and have resided there since November 1990. Frances O'Neill has been living with me since January of 1993 because she became homeless and I did not want her to be on the street. She became pregnant during this time and has resided with me since. She gave birth to Luella Elizabeth Joneson on January 30th, 1994 at Approx. 11:15 A.M.

She was brought to Weiss Memorial Hospital after in-home delivery with my help. There she was tested for hemorrhaging, and baby was tested for blood type because Mother was RH negative and may have needed RHO-gram shot. They were discharged within one day and returned home with me. I have provided food for both and all necessities for baby, medical prescription, etc/ She has agreed to stay home for 2 weeks. She has experienced severe depressions before and after delivery, due to pain and hormonal changes as far as I can believe. Hopefully due to my realization and experience through previous pregnancies I can prevent this from happening. She seems to be thinking and acting more rationally than in the past. She has been threatening to leave in the next couple of weeks when she gets her money from probate, (mother's death)

I believe that she is mentally stable to care for children and baby, given proper supervision and understanding

s/g Eugene Joneson

2/8/094 .

C140

State of Illinois
County of Cook

In The Circuit Court of Cook County, Illinois
. . . Department of Juvenile Justice and Child Protection
Child Protection Division

In Re The Petition of	)	No. 94JA 1107
Adjudication of Wardship of	)	
Luella Joneson	)	Filed
Minor	)	99 May 26 AM 11:30
		Circuit Court of Cook
		County, Il
		Juvenile Division
		Aurellia Pucinski, Clerk

Notice of Motion

To:

On 6/22, 1998 at 11;00 A.M., or as soon thereafter as counsel may be heard, I shall appear before the Honorable Judge Mulhern, or any judge sitting in her stead, in calendar number 4k in the Juvenile Court Building, 2245 West Ogden, Chicago, Il. 60612, or the courthouse located at 1100 S. Hamilton and present the attached pleading requesting: Motion to add missed documentation or suppiement

Attorney Signature "s/g Eugene Joneson , Pro Se, 2043 W. Dickens, Chicago, Illinois 60647, 773-645-9695.

C226

Vol. 1 of 2, January 8th, 1999. Appellate Record C 190

Hon. Roberto Maldonado
Commissioner
District 8

Cook County Board of Commissioners
Chicago, Illinois 60602

May 14, 1998

To whom it may concern:

I certify that on May 7, 1998, at approximately 4;57 p. m., I placed a call to 312 666-3488, known as Erie Family Health Center to speak to Ms. Eva Hernandez, an employee of Erie Family Health Center. NI asked her a question on behalf of Mr. Eugene Joneson. I asked Ms. Hernandez, "Did Mr. Joneson ever attend Parenting classes at Erie Family Health Center?" Her response was that she could not anser that question because those records were purged or destroyed after five years. But she could state with certainty that Erie Family Health Center has never offered Parenting classes. They have never had such a program.

She also stated that Mr. Joneson did receive other services from the agency, but they could not have been parenting classes because no such program existed.

She also stated the Mr. Joneson did receive other services from the agency, but they could not have been parenting classes because no such program existed.

Sincerely,

"S/ David Del Devalle"

David Del Valle
Administrative Aide V/Chief of Staff
115 North Clark Street
Room 567
Chicago, Illinois 60602

District Office
2617 W. Division St.
Chicago, Illinois 60622

C227

HECTOR RIVERA'S TESTIMONY PARENTING CLASSES BEING TAKEN AT ERIE FAMILY HEALTH CENTER

Vol 1 of 2, January 8th, 1999. Appellate Common Record C191-192 ln 8-192 ln16, 194 ln22-196 ln9 or Vol 1 of 6, R , R 206 207),(Vol 1 of 6, R228 ln13- R229 ln4)

Vol 1 of 2, January 8th, 1999. C191 ln 8-22 or Vol 1 of 6, R 186 ln 8-21

Q. Do you recall how you evaluated the parenting skills requirements under the service plan?

A According to the case review, actually, there is no check as to satisfactory or unsatisfactory. Because we were awaiting a report from the parental skills group .

Q. Were was father to receive the parental services parenting skill class training?

A During the service plan, he was to go to Erie Family Mental Health Center.

The court: Did you say Erie?

The Witness: yes.

NO CONTACT WITH ERIE ABOUT SERVICES TO BE OFFERED

Vol 1 of 2, January 8th, 1999.C194 ln22-196 ln9 or Vol 1 of 6, R206 ln22-208 ln8)

Q. From the time of June of 1988 to October of '88, do you remember where— what parenting skills program the father was to attend?

A. Erie Family Health center

Q. In June of 1988, who was the Erie Family Mental Health worker who was assigned to the case of the O'Neill children and Mr. Joneson specifically?

A. There were two people who I know that worked in that program. It was Eva Hernandez and Dr. Strongin.

C191

Q. And when you took over this case in 1988, June of 1988, did you have a meeting with Dr. Strongin about Mr. Joneson?

A. No, I did not.

Q, Did you have a meeting with Miss Hernandez about my client's progress in June of 1988?

A. No, I did not.

Q. Between the time of June of 1988 and a October of 1988, did you have a meeting with Miss Hernandez or Dr. Strongin?

A. No, I did not

Q. Now, besides the parenting skills program at Erie Family Mental Health Center and the visitation that my client was to receive — let me strike that.

The basis for the referral to the parenting skills program was in order to develop–to educate my client as to what would be proper— what you would consider proper behavior for disciplining his children?

A. Yes

Q. And proper nutrition for his children?

A. Yes

Q. And proper limitation setting for his children?

A. yes

NO OTHER REFERRALS BESIDES ERIE FAMILY
Vol 1 of 6, R228, ln 7-R229 ln4)

Q. And you stated that— you made these same observations that there were these limitation setting problems in October of '88, isn't that correct, that you observed these same kind of limitation setting problems?

A. That's what I wrote down.

R228

Q. So from roughly— and it was you opinion— or was it your belief that these types of problems would be resolved in parenting skill classes at Erie Family Mental Health Center?

A. Not solely

Q. Where else besides Erie Family Mental Health Center did you refer my client for parenting skills classes?

A. I'm talking about as a whole, all the services as a whole.

Q. For parenting skills classes, where besides Erie Family Mental Health Center did you make a referral for my client to go?

A. For parenting classes?

Q. For parenting classes.

A. No other services

R229

(Voi 1 of 6, R234, ln 20-R235 ln4) HECTOR RIVERA THE ONLY PERSON TO MAKE REFERRALS

Q But for the allocation of resources or referrals to parenting skills programs, was there any other worker besides yourself who made referrals to my client?

A. No..

Q. So in effect you were the only person to make referrals for parenting skills classes during that period of time, isn't that correct?

A. yes.

R234

State of Illinois
County of Cook

In The Circuit Court of Cook County, Illinois
. . . Department of Juvenile Justice and Child Protection
Child Protection Division

In Re The Petition of) No. 94JA 1107
Adjudication of Wardship of)
Luella Joneson)
Minor)

Filed
98 Jun 18 PM 4;18
Circuit Court of Cook
County, Il
Juvenile Division
Aurellia Pucinski, Clerk

Notice of Motion

To:

On 4/7, 1998 at 9:00 A.M., or as soon thereafter as counsel may be heard, I shall appear before the Honorable Judge Mulhern, or any judge sitting in her stead, in calendar number 4k in the Juvenile Court Building, 2245 West Ogden, Chicago, Il. 60612, or the courthouse located at 1100 S. Hamilton and present the attached pleading requesting: Motion for letters to be allowed to be written to girls without being opened and read by caseworker before delivery and also to include the topic of adoption.

Attorney Signature "s/g Eugene Joneson , Pro Se, 2043 W. Dickens, Chicago, Illinois 60647, 773-645-9695.

NO SERVICE PLANS FROM MAY 7TH, 1991 TO FEBRUARY 2ND, 1994 Vol 1 of 2, clerk stamp C101
Table of Contents of Record of Appeal

Client service Plan- May 7, 1991	C-122
Client Service Plan -1991	C-132
Client Service Plan-October 10, 1990	C-135
Client Service Plan -May 7th , 1991	C-142
Client Service Plan February 2nd, 1994	C -159
Client Service Plan- August 10, 1994	C-161
Client Service Plan- November 7, 1994	C-167

Illinois Department of Children and Family Services
Child Summary

Date of Plan 11/7/94

Child's Name Luella Joneson Child's I.D.: T499-86-05

Name of Placement: Mario and Ann Villanueva
Address: Catholic Charities, 651 W. Lake, Chicago, Illinois, 60661
Placement Checklist

Y	N	N/A	
X			Is the child placed in the least restrictive setting most approximating a family which meets the child's needs?
	X		Are siblings placed together?
X			Is the child placed within reasonable proximity to home?
X			In a home of similar ethnic and cultural background?
X			In a home with the same religion?
	X		Is the child placed with relatives?

Explain all "no" answers. In addition, if the child is in an institution or group home setting, please explain why and indicate how long the child will remain there.
A. No appropriate relative home could be found at the time Luella came into care.

Found in Vol 1 of 9,C88